3988.

SUPREME COURT OF THE UNITED STATES,

No. 125.

THE STEAMBOAT NORTHERN INDIANA, HER TACKLE, &c. THE MICHIGAN SOUTHERN RAILROAD COMPANY, CLAIMANT, APPELLANT.

vs.

HORACE MACK & JOSEPH F. HICKSON, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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Appeal.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Company, claimant, respondent and appellant.

The above named respondent and appellant, conceiving itself aggrieved by the final sentence or decree entered on the ninth day of September, one thousand eight hundred and fifty-three, in the above entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States. And it prays that this, its appeal, may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

DENNIS BOWEN,
Proctor for Appellant.
HENRY W. ROGERS, *Advocate.*

Citation.

UNITED STATES OF AMERICA, *ss.*

To Horace Mack and Joseph F. Hixon, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday of December next, pursuant to an appeal from a decree of the circuit court of the United States, for the northern district of New York, wherein the Steamboat Northern Indiana, her tackle, apparel, and furniture, the Michigan Southern Railroad Company, claimant, is appellant, and you are the appellees, to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

Witness the honorable Samuel Nelson, justice of the said Supreme Court of the United States, this 20th day of October, in the year one thousand eight hundred and fifty-three.

S. NELSON.

We hereby admit the service of the above citatation.

HORACE MACK,
JOSEPH F. HIXON,
By JOHN GANSON, *Proctor.*

Buffalo, Oct. 26, 1853.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Company, respondents and appellants.

UNITED STATES OF AMERICA,
Northern District of New York, ss.

I, Augustus A. Boyce, clerk of the circuit court of the United States of America, for the northern district of New York, in the second circuit, do hereby certify to the Supreme Court of the United States, that the pleadings, testimony, proceedings, writings, and final decree, hereunto annexed, are true and correct transcripts of all of their originals remaining on the files of my office in the above entitled cause.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this eighth day of November, in the year of our Lord one thousand eight hundred and [SEAL.] fifty-three, and of the independence of the United States of America the seventy-eighth.

AUGUSTUS A. BOYCE,
Clerk circuit court U. S., northern district, N. Y.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH J. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, &c. The Michigan Southern Railroad Company, respondent and appellant.

To the circuit court of the United States for the northern district of New York:

The petition of appeal of the above named, the Michigan Southern Railroad Company, respectfully shows, that a decree was lately made in the district court of the United States, for the said district, bearing date the tenth day of November, one thousand eight hundred and fifty-two, in a certain cause of admiralty and maritime jurisdiction pending

in the said court, wherein the above named Horace Mack and Joseph J. Hixon were the libellants, and the above named, the Michigan Southern Railroad Company, claimant of the Steamboat Northern Indiana, her tackle, apparel, and furniture, &c., and respondent; in and by which said decree it was ordered, adjudged, and decreed, that the collision in the libel in this cause set forth occurred as therein stated, and that the libellants were the owners of four thousand bushels of wheat on board the schooner Plymouth, which was sunk by the said collision; and that the said wheat was thereby wholly lost to the libellants; and that the said collision occurred by reason of the negligence and mismanagement of those having charge of the said steamboat Northern Indiana. And it is further ordered, adjudged, and decreed, that, by reason of the premises, the libellant ought to have and receive the sum of three thousand four hundred and forty-eight dollars and twenty cents, for and on account of the damages by them sustained by reason of the said collision. And it is further ordered, adjudged, and decreed, that the said claimant and respondent, within fifteen days after service upon its agent or proctor of a copy of this decree, pay into the registry of the court the said sum of three thousand four hundred and forty-eight dollars and twenty cents, together with the costs and charges by the libellants incurred in the prosecution of this suit, as the same shall be taxed; and also the fees and charges of the officers of the court in this suit to be taxed. And it is further ordered, adjudged, and decreed, that unless the said claimant and respondent shall make the payments above directed as hereinbefore provided, execution do forthwith issue against it and its sureties upon the stipulation whereupon the said steamboat was delivered out of the custody of the marshal upon the warrant of arrest heretofore issued in this suit. And it is further ordered, adjudged, and decreed, that if the said claimant and respondent shall make the said payments as hereinbefore directed, it shall be forever exonerated from all other and further payment in the premises.

Which said decree of the said district court is, as this appellant is advised, erroneous, and ought to be reversed.

Whereupon, this appellant respectfully prays that the said decree may be reversed, and that such decree may be made by this court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which it has lost by said decree.

Dated the 3d day of April, 1853.

THE MICHIGAN SOUTHERN RAILROAD CO.,
By DENNIS BOWEN, *its Att'y.*

Filed May 2d, 1853.

DENNIS BOWEN, *Proctor.*
H. W. ROGERS, *Advocate.*

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH J. HIXON,
libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA,
The Michigan Southern Railroad
Company, respondent and appellant.

The answer of the above appellees to the appeal of the appellants.

These appellees not confessing or acknowledging all or any of matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto say, that they believe it to be true, that such decree as is complained of by the appellant was made in the district court of the United States, for the northern district of New York, as is in the said petition of appeal set forth; but as to the date, substance, and contents thereof, these appellants crave leave to refer thereto, when the same shall be produced.

And these appellants are advised and believe that the said decree is agreeable to justice and equity, and they therefore pray that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these appellees.

HORACE MACK,
JOSEPH F. HIXON,
By JOHN GANSON,
Their Attorney.

Filed May 13th, 1853.

JOHN GANSON, *Proctor for appellees.*
D. TILLINGHAST, *Advocate.*

UNITED STATES OF AMERICA,
Northern District of New York.

I, Aurelian Conkling, clerk of the district court of the United States of America, for the northern district of New York, do hereby certify that the writings annexed to this certificate, and to the citation and petition of appeal hereunto attached, are true copies of their originals on file and remaining as of record in my office.

In testimony whereof, I have hereunto signed my name, and affixed the seal of the said court, this 22d day of April, A. D. 1853.
[L. S.]

AURELIAN CONKLING, *Clerk.*

3996.

DISTRICT COURT OF THE UNITED STATES,
For the Northern District of New York.

JOSEPH F. HIXON AND HORACE MACK, libellants,

THE STEAMBOAT NORTHERN INDIANA, her boats, engine, tackle, apparel, and furniture. The Michigan Southern Railroad Company, claimant, and respondent.

The above named respondent conceiving itself aggrieved by the sentence or decree entered on the 10th day of November, 1852, in the above cause, doth hereby appeal therefrom to the next circuit court of the United States, to be held in and for the said district, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said circuit court.

DENNIS BOWEN,
Proctor for respondents.
HENRY W. ROGERS,
Advocate for respondent.

UNITED STATES OF AMERICA,
Northern District of New York.

To Joseph F. Hixon and Horace Mack, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, for the northern district of New York, to be held in Albany, in and for said district, on the third Tuesday of May next, pursuant to an appeal from a decree of the district court for the said district, wherein the steamboat Northern Indiana, her tackle, apparel, and furniture, the Michigan Southern Railroad, claimant, is appellant, and you are the appellee, to show cause, if any there be, why the said decree should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Hon. Nathan K. Hall, district judge of the United States, for the northern district of New York, at the city of Buffalo, this 13th day of November, 1852.

N. K. HALL.

NORTHERN DISTRICT OF NEW YORK,
Tompkins County, ss.

Stephen B. Cushing, of Ithica, being sworn, says, that on the 25th day of November, 1852, at Ithica, he served a copy of the above on the said appellee, Horace Mack, and on the 3d day of January,

1853, a like copy on Joseph F. Hixon, by delivering the same to each of the said appellees personally, and at the same time showing to each of them the above; and deponent further says that he knows the persons upon whom such service was made to be the appellees above mentioned and described as appellees in the above mentioned suit; and farther, that he left a copy of the foregoing with each of said appellees.

S. B. CUSHING.

Sworn before me, this 3d of January, 1853.

E. WEAVER,
Clerk of Tompkins Co.

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Buffalo, on the 7th day of December, A. D. 1852.

Present, the Hon. N. K. Hall, district judge.

HORACE MACK AND JOSEPH F. HIXON,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Co., claimant and respondent.

On the 19th day of July, A. D. 1852, Horace Mack and Joseph F. Hixon, the libellants in this cause, filed their libel, before the judge of the said district, against the steamboat Northern Indiana, her tackle, apparel, and furniture, which libel is hereunto annexed; and thereupon, an order was entered, directing the issuing of process against the said steamboat in the following words:

At a special session of the district court of the United States of America, for the northern district of New York, held at the city of Auburn, on the 19th day of July, in the year of our Lord 1852.

Present, the Hon. Alfred Conkling, district judge.

HORACE MACK AND JOSEPH F. HIXON
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, &c.

On filing a libel in this cause, and on motion of Mr. Ganson, proctor for the libellants, it is ordered that a warrant of arrest and monition be issued, herein returnable the 10th day of August next.

And a warrant of arrest and monition was thereupon accordingly issued, which, with the marshal's return thereon endorsed, was subsequently duly returned and filed, and is hereunto annexed; and on the 10th day of August, 1852, a bond was filed on the part of the Michi-

gan Southern Railroad Company, the claimant and respondent aforesaid, which is hereunto annexed; and on the 11th day of August, 1852, the answer of the claimant and respondent was duly filed, and is hereunto annexed. On the 5th day of October, 1852, the cause came before the court for trial, and on the 10th day of November, 1852, a final decree was entered herein in the following words:

At a stated session of the district court of the United States of America, for the northern district of New York, held at the city of Buffalo, on the 10th day of November, 1852.

Present, the Hon. N. K. Hall, district judge.

HORACE MACK AND JOSEPH F. HIXON
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Company, claimant and respondent.

This cause came before the court to be heard upon the pleadings therein, and upon the evidence taken in open court, and was subsequently argued by counsel; and thereupon, upon consideration thereof, due deliberation being thereupon had, it is ordered, adjudged, and decreed, that the collision in the libel in this cause set forth occurred as therein stated; and that the libellants were the owners of four thousand bushels of wheat on board the schooner Plymouth, which was sunk by the said collision; and that the said wheat was thereby wholly lost to the libellants; and that the said collision occurred by reason of the negligence and mismanagement of those having charge of the said Steamboat Northern Indiana; and it it further ordered, adjudged, and decreed, that by reason of the premises, the libellants ought to have and receive the sum of three thousand four hundred and forty-eight dollars and twenty cents, for and on account of the damages by them sustained by reason of the said collision; and it is further ordered, adjudged, and decreed, that the said claimant and respondent, within fifteen days after service upon its agent or proctor of a copy of this decree, pay into the registry of the court the said sum of three thousand four hundred and forty-eight dollars and twenty cents, together with the costs and charges by the libellants incurred in the prosecution of this suit, as the same shall be taxed, and also the fees and charges of the officers of the court, in this suit to be taxed.

And it is further ordered, adjudged, and decreed, that unless the said claimant and respondent shall make the payments above directed as hereinbefore provided, execution do forthwith issue against it and its sureties, upon the stipulation whereupon the said steamboat was delivered out of the custody of the marshal upon the warrant of arrest

heretofore issued in this suit; and it is further ordered, adjudged, and decreed, that if the said claimant and respondent shall make the said payments as hereinbefore directed, it be forever exonerated from other and further payment in the premises.

Whereupon, the costs of the libellants were taxed at one hundred and fifty-seven dollars and ten cents; and the pleadings, bills of costs, bond, process, and such other papers as are by law required, are hereunto attached, and the said final decree is signed and enrolled according to law, they day and in the caption of the enrollment mentioned.

In Admiralty.

To the judge of the district court of the northern district of New York:

Joseph F. Hixon and Horace Mack, of Ithica, in the State of New York, and within the district aforesaid, and sole owners of the wheat hereinafter mentioned and referred to, exhibit this their libel against the Steamboat Northern Indiana, whereof Robert Wagstaff is master, now lying at the port of Buffalo Creek, in the northern district of New York, and within the admiralty and maritime jurisdiction of this court, her engine, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the said Joseph F. Hixon and Horace Mack do allege and propound as follows:

First. That the libellants reside at the place above named, in the northern district of New York; that the Steamboat Northern Indiana, as these libellants are informed and believe, is owned by Arthur Edwards, and that the same, at the time of the collision hereinafter mentioned and referred to, was running under a charter entered into for the season of the year 1852, by and between the said Arthur Edwards, as owner thereof, and the Michigan Southern Railroad Company, from the city of Buffalo to Monroe, in the State of Michigan, for the transportation of passengers and freight; and that the said Wagstaff was, at the time of the said collision, master of the said steamboat.

Second. That these libellants had, at Milan, in the State of Ohio, four thousand bushels of white wheat, which, as they are informed and believe, was, on the 21st day of June, in the year 1852, shipped on board of the schooner Plymouth, to be transported from Milan aforesaid to Buffalo, in the State of New York.

Third. That the said schooner Plymouth was, as these libellants are informed and believe, a vessel of more than twenty tons burthen, and enrolled and licensed in the office of the collector of customs at the port of Buffalo Creek, at the city of Buffalo, and licensed for the coasting trade, and employed in the business of commerce and navi-

gation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters connecting the said lakes, and was so enrolled, licensed, and employed, at the time of the collision hereinafter mentioned and referred to.

Fourth. That the said Steamboat Northern Indiana, as these libellants are informed and believe, was, at the time of the said collision, and now is, enrolled and licensed for the coasting trade at the office of the collector of customs, at the port of Buffalo Creek; that she is a vessel of more than twenty tons burthen, and engaged and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and the public navigable waters connecting the said lakes, and at the time of the said collision was on Lake Erie.

Fifth. That on the morning of the 23d day of June, in the year 1852, as these libellants are informed and believe, and while the said schooner Plymouth was on her voyage from the port of Huron, in the State of Ohio, to the port of Buffalo Creek, in the State of New York, with the wheat aforesaid belonging to these libellants on board, together with other property, and at about half past one o'clock in the morning of the said 23d day of June, and about thirty miles northerly from Cleveland, in the State of Ohio, she hove in sight of a steamer, which subsequently proved to be the Northern Indiana. The wind was about north northwest, blowing a moderate breeze; the lake was smooth, and the said schooner was running by the wind within a point or two of being close-hauled, and steering about northeast by east, under sail, with all sails set. The said Steamboat Northern Indiana, as these libellants are informed and believe, was discovered by the mate of the said schooner about half an hour prior to the collision aforesaid. The weather was fine, the air clear, and the sky brightened by the northern lights, as these libellants are informed and believe. That the said schooner, as these libellants are informed and believe, had during the night, up to the time of the said collision, a white light at her jib-boom burning and visible, and the proper signal lights also hung out, burning, and visible. That while the said schooner was sailing as aforesaid, in the direction aforesaid, the said Steamboat Northern Indiana, as these libellants are informed and believe, bound on her way up the lake, ran into her carelessly and negligently, and struck the said schooner on her starboard side about midships, and injured her so badly that she sunk in about ten minutes, and was entirely submerged, save her topmast, in water about eighty feet deep, and that the said four thousand bushels of wheat belonging to these libellants sunk with the said schooner. That, as these libellants are informed and believe, there were proper lookouts on the said schooner; she kept and continued her course, and as soon as any danger of the said collision, called out to those having charge of the

said steamboat, that she was running into the said schooner, but the speed of the said steamer was not slackened.

Sixth. That, as these libellants are informed and believe, the lights, position, and course of the said schooner could have been easily seen and determined by the persons having the management of the said steamboat; and the collision could have been readily avoided, had the commander of the said steamboat, and the persons having the charge thereof, performed their duty; that, as these libellants are informed and believe, the said collision was in no degree occasioned by any fault of the persons having the management and control of the said schooner, but that the same was occasioned by the negligence, carelessness, and mismanagement of the master or crew of the said steamer; and especially, as these libellants are informed and believe, by the negligence of the wheelsman and the engineer, and by the want of a proper and attentive lookout; and that, by reason of such negligence, carelessness, and mismanagement on the part of those having the charge of the said steamboat, the wheat aforesaid of these libellants has become wholly lost and destroyed, to the damage of these libellants in the sum of about thirty-five hundred dollars.

Seventh. That the said schooner, as these libellants are informed and believe, up to the time of the said collision, was tight, staunch, strong, well-manned, appointed, and provided, and that the wheat aforesaid was safely and properly laden and stored on board thereof; and that at the time when the danger of a collision between the said schooner and the said steamboat was first perceived by the mate of the said schooner, it was, as these libellants are informed and believe, impossible for the said schooner to get out of the way of the said steamboat, nor were there any reasons to which she could have resorted with propriety for that purpose.

Eighth. That all and singular the premises are true, as these libellants verily believe.

Wherefore these libellants pray that process, in due form of law, may issue against the said steamboat Northern Indiana, her engine, machinery, boats, tackle, apparel, and furniture, and that this court will pronounce for the damages aforesaid, and decree the same to be paid with costs; and for such other, further, or different relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

HORACE MACK,
JOSEPH F. HIXON,
By H. MACK.
JOHN GANSON, *Proctor.*
THOS. J. DUDLEY. Jr., *Advocate.*

UNITED STATES OF AMERICA,
And Northern District of New York, ss.

On this 9th day of July, A. D. 1852, before me personally came

Horace Mack, one of the libellants in the preceding libel named, and made oath that he had heard read the preceding libel by him subscribed, and knows the contents thereof, and that the said libel is true in substance and fact, as he verily believes.

JESSE WALKER,
County Judge and U. S. Com'r.

In admiralty.

The answer of the Michigan Southern Railroad Company, the claimant of the Steamboat Northern Indiana, her boats, tackle, apparel, and furniture, to the libel of Horace Mack and Joseph F. Hixon, libellants.

The said, the Southern Michigan Railroad Company, for answer to the said libel of the said Horace Mack and Joseph F. Hixon, says:

First. That the said, the Southern Michigan Railroad Company was, at the time of the collision in the said libel mentioned, and now is, entitled to the possession of the said Steamboat Northern Indiana, her boats, tackle, apparel, and furniture, under and by virtue of an agreement or charter party made between this respondent and the owners of the said steamboat, by which the said steamboat was chartered to this respondent for the present season of navigation on Lake Erie.

Second. This respondent admits the truth of the allegations in the first article of the said libel contained.

Third. This respondent has no knowledge, information, or belief of any of the matters contained in the second article of the said libel.

Fourth. This respondent has no knowledge, information, or belief as to the matters in the third article of the said libel contained.

Fifth. This respondent admits the truth of the allegations in the fourth article of the said libel contained.

Sixth. This respondent, as to the matters in the fifth article of the said libel contained, says, that the same are therein in great part falsely and untruly alleged and pleaded; for the truth and fact was and is, and the respondent doth allege, that on the morning of the 23d day of June, in the year 1852, at about one o'clock in the morning, and at the distance of about 20 miles northerly from Cleveland, in the State of Ohio, the said schooner Plymouth came in sight of the first mate, wheelsman, and watchman, then on duty in their respective capacities on board of the said Steamboat Northern Indiana, and was then and there discovered by them, which said steamboat was then on her way up Lake Erie from Buffalo, in the State of New York, to Monroe, in the State of Michigan. The wind was blowing freely from about the northwest. The lake was rough, and the said schooner, with all sails set, was steering about north northwest, and when first discovered by the said mate, wheelsman, and watchman of the said Steamboat Northern Indiana as aforesaid, was about one-fourth of a mile distant from and headed across the bow of the said steamboat.

The said steamboat was running at the speed of about eighteen miles an hour, and was then, and for about two hours previous had been, steering southwest by west, three quarters west, and directly for the middle passage, so called. The weather was thick, and it was smoky and hazy upon the water. The said schooner, at the time she was so discovered as aforesaid, had no signal lights visible, and the light at her jib-boom burned dimly. That within two minutes after the said schooner was so discovered by the first mate, wheelsman and watchman of the said steamboat as aforesaid, the said collision took place. That as soon as the said schooner was so discovered, the said wheelsman put the wheel of the said steamer hard a-port, and the engineer in charge of the engine of the said steamboat promptly and faithfully endeavoured to check and back the said steamboat, and deaden its headway; and each and every, the said first mate, wheelsman, and watchman, and engineer of the said steamboat, then acting for the respondent, did then and there make every reasonable and proper effort to prevent the said collision.

That the said Steamboat Northern Indiana did not carelessly and negligently run into the said schooner and sink her, as in and by the said fifth article of the said libel is alleged; but that, on the contrary thereof, the said schooner was run into and sunk without the fault or misconduct of the said Steamboat Northern Indiana, or the person or persons having charge, management, and control of the same; that the said schooner, at the time of the said collision, was not on her true course from the port of Huron, in the State of Ohio, to the port of Buffalo Creek, in the State of New York, as in and by the said fifth article of the said libel is alleged; and this respondent avers, that if the said schooner had been upon her true course, the said collision would not have occurred, and that the same was occasioned by the carelessness and negligence of the person or persons then in charge of, and having the control and management of, the said schooner.

Seventh. This respondent, as to the matters in the sixth article of the said libel contained, says, that the same are therein wholly falsely and untruly stated, alleged, and pleaded; for the truth and fact was and is, that the lights, position, and course of the said schooner could not have been easily seen and determined by the commander or other person having charge of the said Steamboat Northern Indiana in time to have avoided the said collision; and that the first mate, then being in command of the said steamboat, and the wheelsman and watchman thereof, then on the same, were each and every of them vigilant and attentive, and were fully competent to keep up a necessary watch and lookout, and for at least one hour prior to and up to the time of the said collision, did vigilantly and faithfully lookout and watch, and were unable to discover the said schooner, her lights, position, and course, in time to have avoided the said collision.

That the said collision was, in fact, occasioned by the fault and

misconduct of the person or persons having the management and control of the said schooner, in this, to wit: that he or they so having the management and control of the said schooner did not keep the same on her true course from the said port of Huron to the said port of Buffalo Creek; but, after discovering the said Steamboat Northern Indiana, did, on the contrary, change her course, and then and there luff up the said schooner across the bow of the said steamboat, causing thereby the said collision. And the respondent further says, that the said collision was in no degree occasioned by the negligence, carelessness, or mismanagement of the master or crew of the said steamboat, or by the negligence of the wheelsman or engineer, or by the want of proper attention on the part of either to their respective duties, or by the want of an attentive and sufficient lookout, or by reason of any cause or thing other than is herein stated and set forth.

Eighth. This respondent, as to the matters in the seventh article of the said libel contained, says, that it has no knowledge, information, or belief as to anything therein contained as to the condition or situation of the said schooner at the time of the said collision, or as to whether the said wheat was safely and properly laden and stowed on board thereof; but as to all the rest and residue of the matters therein contained, this respondent denies the same and the whole thereof.

Ninth. This respondent, as to the matters in the eighth article of the said libel contained, says, that it denies the allegations therein contained.

Tenth. That all and singular the premises herein contained are true. Wherefore the respondent prays that this Hon. Court will be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

By H. M. KINNE, *their Agent.*
DENNIS BOWEN,
Proctor for Respondent.
HENRY W. ROGERS, *Advocate.*

NORTHERN DISTRICT OF NEW YORK,
Erie County, ss.

Henry M. Kinne, being sworn, says, that he is agent of the respondent named in the foregoing answer; that he has made diligent inquiries in relation to the matters therein contained, and that the matters therein contained are true, as he believes.

H. M. KINNE.

Sworn before me this 9th day of August, 1852.
JESSE WALKER,
County Judge and U. S. Com'r.

Know all men by these presents, that I, Aaron D. Patchin, of the

city of Buffalo, am held and firmly bound unto Joseph F. Hixon and Horace Mack, of Ithica, in the State of New York, in the penal sum of seven thousand dollars, to be paid unto the said Joseph F. Hixon and Horace Mack; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated the 22d day of July, 1852. Whereas, in a certain cause of trespass, civil and maritime, moved and prosecuted in the district court of the United States of America, for the northern district of New York, on behalf of the above-named Joseph F. Hixon and Horace Mack, against the Steamboat Northern Indiana, her tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said steamboat, her tackle, apparel, and furniture, in virtue of which said warrant the said steamboat, her tackle, apparel, and furniture, have been arrested by George B. Gates, one of the deputies of the marshal of the said district, and are now in his custody. Now, therefore, the condition of this obligation is such, that if the Southern Michigan Railroad Company, the claimant of the said steamboat, her tackle, apparel, and furniture, shall well and truly abide and answer the decree of the said court in the aforesaid cause, then this obligation shall be void; otherwise, of full force.

A. D. PATCHIN.

NORTHERN DISTRICT OF NEW YORK,
Erie County, ss.

On the 23d day of July, 1852, before me, the subscriber, appeared Aaron D. Patchin, who acknowledged that he executed the foregoing instrument; and I certify that I know the person who made the said acknowledgment to be the individual subscribed in, and who executed, the said instrument.

JESSE WALKER,
County Judge and U. S. Com'r.

NORTHERN DISTRICT OF NEW YORK,
Erie County, ss.

Aaron D. Patchin, the obligor in the foregoing bond, being sworn, says, that he is worth the sum of seven thousand dollars, over and above his just debts and liabilities.

A. D. PATCHIN.

Sworn before me this 23d day of July, 1852.

JESSE WALKER,
County Judge and U. S. Com'r.

I hereby approve of the above bond and of the surety, July 23d, 1852.

JESSE WALKER,
County Judge and U. S. Com'r.

In Admiralty.

UNITED STATES DISTRICT COURT,
For the Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON
vs.
THE STEAMBOAT NORTHERN INDIANA, her engine, &c.

Retainer of advocate	$3 75
Perusing, examining libel, &c	1 25
Attendance on issuing monition	62½
Attendance on issuing process of arrest	62½
Arguing on final hearing, on pleadings, and proofs	5 00

Proctor's fees.

Retainer of proctor	$3 75
Drawing libel, 14 folios	1 75
Three copies of the same	5 25
Motion for monition	62½
Motion for process of arrest	62½
Brief for hearing	2 50
Attending taxation of costs	50
Copy of bill of costs for opposite proctor	37½
Copy of pleadings for the court, 35 folios	4 37½
Notice of trial	37½
Notice of taxation	37½
Arguing cause in court	1 25
Two subpœna tickets and service	75
Eight witnesses, 3 days each	30 00
Carpenter's travel fee from Dunkirk	4 00
Kirby, Clifford, Virgil, and Stevens, each traveled over 100 miles	40 00
John Stevens attended as witness in this case 3 days	3 75
Travel for over 100 miles	10 00
	$121 52

By consent of claimant's proctor, the foregoing bill is taxed at $121 52.

AURELIAN CONKLING, *Clerk.*

DISTRICT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON,
vs.
THE STEAMBOAT NORTHERN INDIANA,
her tackle, &c.

Clerk's Bill.

Filing libel, 6 c.; ent. order for process, 15 c.	$0 21
Dr. warrant and monition, fol. 3, 15 c.; eng., 10 c.; seal, 25.	1 00
Dr. notice, fol. 6, 15 c.; 2 copies, 10 c. each	2 10
Ent. order to return warrant, 15 c.; ent. ret. of same, 15 c.	30
Filing warrant and return, 12 c.; order for proclamation, 15 c.	27
Ent. proclamation, 15 c.; taking papers to court, 30.	45
Swearing 21 witnesses in open court, 10 cts. each	2 10
Dr. final decree, fol. 5, 15 c.; eng. 10 c.; ent. 10 c.; 2 copies, 20 c.	2 75
Attending judge for signature of decree	1 00
Taxing and filing proctor's and marshal's bills	2 12
Dr. record of enrollment, fol. 5, 15 c.; eng. 10 c.	1 25
Entry of proceedings in ledger	30
Dr. copy costs and attendance on taxation.	1 25
	$15 10

DISTRICT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON,
vs.
THE STEAMBOAT NORTHERN INDIANA,
her tackle, apparel, &c.

Marshal's bill.

Serving warrant and monition	$2 00
Travel to Auburn to return same, 153, 5 c.	7 65
Proclamation 30 c., return 13 c.	43
Bond.	50
Travel to return warrant, 153, 5 cents	7 65
One day's ship-keeping	2 25
	20 48
	7 65
	$12 83

Taxed at $12 83.

AURELIAN CONKLING, *Clerk.*

Warrant of arrest in rem.

UNITED STATES OF AMERICA,
Northern District of New York, ss.

The President of the United States of America, to the marshal of the northern district of New York, and to his deputy whomsoever, greeting: [L. S.]

You are hereby jointly and severally empowered, and strictly enjoined and commanded, that you arrest the vessel called the Steamboat Northern Indiana, (whereof Robert Wagstaff now is, or late was, master,) her boats, tackle, apparel, and furniture, if she shall be found within your district; and the same so arrested you keep under safe and secure arrest, until you shall receive further orders from the said court, or the same shall be discharged in due course of law; and that you cite at the premises all persons in general who have or pretend to have any right, title, or interest therein, to appear before the judge of the district court of the United States of America for the northern district of New York, at the city of Auburn, on the 10th day of August next, if it be a court day, or else on the court day next following, at 10 o'clock in the forenoon, there to answer unto Joseph F. Hixon and Horace Mack, of Ithaca, in the State of New York, in a cause of collision, civil and maritime, and farther to do and receive in this behalf as to justice shall appertain; and that you duly certify the judge of the aforesaid court what you shall do in the premises, together with these presents.

Witness the Hon. Alfred Conkling, judge of the aforesaid court, at the city of Auburn, this 13th day of July, A. D. 1852.

AURELIAN CONKLING, *Clerk.*

Action for $3,750.

JOHN GANSON, *Proctor.*

Return.

I have arrested the within named steamboat Northern Indiana, her tackle, apparel, and furniture, and have cited all persons having or pretending to have any right, title, or interest therein, as by the within warrant I am commanded to do.

JOHN T. BUSH, *Marshal.*
G. B. GATES, *Deputy.*

Filed May 6th, 1853.
[REC. CXXV, D. T., 1853.]—3

DISTRICT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK & JOSEPH F. HIXON, libellants,
vs.
THE STEAMBOAT NORTHERN INDIANA, &c.; and Michigan Southern R. R. Co., respondent.

Libellant's witnesses.

Austin A. Kirby sworn.

The claimants admit that the schooner was enrolled and licensed as alleged.

Capt. Kirby says: I reside at Milan, Ohio, and my business is sailing on the lake. I have followed that business since 1829 on all the lakes, as master, mate, or before the mast. I have been a master some 13 or 14 years. I was master of the schooner Plymouth last summer. The schooner was engaged in carrying freight from Milan and Huron to Buffalo. The schooner was owned by John Stevens, of Milan, and Jason Parker, of Buffalo, N. Y. I was on board the Plymouth at the time she came in collision with the steamer Northern Indiana, in June last. We had on board wheat, flour and potash, and two or three boxes of merchandise. We took on this cargo at Milan for Buffalo. We had on board 8,433½ bushels of wheat, 250 barrels of flour, 7 casks of potash, 3 small boxes of merchandise. The freight from Milan to Buffalo was, I think, 3 cents per bushel for the wheat, 18¾ cents per barrel on flour, I think, and on the potash $1.50 per ton. I can't tell how much the potash weighed. The were some canal charges on the bill of lading, but I don't recollect the amount.

(Question as to the right to recover for freight and back charges reserved by consent.)

There were back charges for canal tolls and freight and lighterage. The vessel was well found in provisions and stores, which were worth, I think, $60. There was a barometer on board. I believe $14 is the price of them. There was a spy-glass on board worth $12. A marine clock worth $5.50, I think. The vessel was in first rate condition. Her sails were new this spring, and she was all fitted out anew this spring. She was worth, at the time of the collision, about $7,500. She was worth that, in my judgment.

The collision occurred on Lake Erie, 25 or 30 miles north, or a little east of north, from Cleveland, about northeast by east from Huron, and about 60 miles distant. It is 240 miles from Huron to Buffalo. It is so called in round numbers. We had lights on the schooner. We had a white light hanging at the jib-boom, and a green light on the pawl-bit or Sampson post. This pawl-bit stood about 5 feet above the deck, and the light was about a foot higher. This light was about

6 feet back from the stem or cutwater of the vessel, and 2½ feet above the rail. After I got on board of the steamboat, after the collision, and before the schooner went down, I saw these two lights burning. The night was clear—a star-light night. Before the collision, and at 12 o'clock, the northern lights made it quite light, but I don't know whether they were showing at the time of the collision. The night was not hazy. At the time of the collision I was not on deck myself. I was in the cabin at the time, and on the cabin floor at the time the vessel struck—the noise and shouting on deck having awakened me before the collision, I had got out of my berth on to the floor. I turned in at 12 o'clock, and the collision occurred, I should think, a little after one o'clock; and I was so told. I saw no time-piece. The schooner sunk directly after the collision; I think in less than ten minutes. The whole cargo sunk with it. The topmasts were just out of the water, and the water was about 80 feet deep where she sunk. The crew were all saved, and got on board the steamer. The wind at the time was from the north-northwest, but varying northerly. The course which I gave the mate at 12 o'clock was northeast by east. The wind freshened and lulled from time to time. We were making about 6 miles an hour at 12 o'clock. At the time of the collision, the wind was about north and about a six-knot breeze. The vessel had her larboard tacks aboard. The sails were on the starboard side, and were filled from the larboard. We could not run our vessel northwest as the wind was at the time of the collision. We could have stood northwest by west if we had been on the other tack, but we could not have steered north northwest. Within five points of the wind is as near as we can steer and work the vessel properly. If the wind had been from about northwest, we could have steered the vessel about north-northwest. We could not have steered anywhere between northwest and north with the wind northwest. I did not look at the compass when I came on deck after the collision. I think the course was northeast by east. The sails were full, and from that and the stars I judge that was then the vessel's course. The schooner was struck on her starboard side. When I came up, the schooner was heading on her course of northeast by east. Her course changed before she sunk by rounding to; she came to the wind, her head coming round to the wind (the northward.) As she lies now, she lies with her head north, ½ east, (or half a point east of north.) I think the steamer struck us about at right angles. I think so, because that was the position of the two vessels when I came on deck, the steamer being run on to the schooner, and the vessel's sails being then filled by the wind. After I got on deck, the steamer backed off, and the schooner came up to the wind. The reason of this was that she carried more sail aft than forward, and was affected by her helm. She sunk fastest forward. The schooner was struck about midships, or half way between her mainmast and foremast. When I first got on board of the steamer, I did not see the captain of the steamer. I did not see him until 4 or 5 minutes after

I got on board the steamer, nor did I see him until the schooner had sunk. I then met the captain a little forward of the after gangways. He asked me where I thought we were? I told him we were below Cleveland, and some ways out. He said he thought he must be above Cleveland and towards the Islands pretty well. (The declarations of the captain are objected to, and the question reserved as to the last and all following answers of same kind.) He said he thought so because he was off Grand River lights when he turned in at 12 o'clock. I asked him where he was bound, and he said to Monroe, and that he was from Dunkirk to Monroe, and his course was west by south, ½ south. That, I think, was her proper course from Dunkirk to Monroe, if he was going the north passage, as he said he was. I have seen the topmasts of the vessel since she sunk, and she is not at the place the captain said he supposed they were. The steamer went into Cleveland after the collision. I asked the captain where he intended to go to, and he said the boat was leaking badly, and he should make for the land, and he put her on the course for the land. He told me they were steering south-southwest when steering for the land. They made the land some distance (perhaps 15 miles) above Cleveland, when they made the Cleveland lights. They steered for the lights more to the east.

John Stevens and Charles N. Ryan had 4,433½ bushels of wheat on the schooner when it was sunk. It was what is called Milan white wheat. It was taken on board at Milan, Ohio. It was worth on board at Milan 84 cents per bushel at the time. Stevens and Ryan were then produce dealers and forwarders at Milan.

Horace Mack and Joseph J. Hickson had, of the same kind and quality of wheat, 4,000 bushels on board at the time the vessel sunk.

Cross examined: I am 35 years of age. I have lived at Milan since a year last June. I moved from Leslie, Ingham county, Michigan, when I went there. I had lived at Leslie about 6 years. I went there from Oswego, N. Y. I had lived at Oswego 7 or 8 years, or from 1835 until I moved to Leslie. I went from Sackett's Harbor to Oswego. I lived at Sackett's Harbor about 6 years, and moved there from Cayuga county, in the town of Ledyard. I was born in Genoa, Tompkins county. I have given my whole attention to nautical pursuits since 1829, with very trifling exceptions. I commenced on the Cayuga lake when I was 8 or 9 years old. In 1829 I went to Lake Ontario, and in 1836 came to Lake Erie. I had been master of the Plymouth from October, 1850, to the time she was sunk. John Stevens and Jason Parker owned her when I first went on board, and she has been owned by them ever since. I do not know who they got her of. I think I heard Parker say he bought his interest of Stevens, but I don't know who Stevens bought her of. I do not know where she was owned before Stevens got her. She was built at Huron, and was five years old last August. Such a vessel

would be worth about $9,000 when she first came out. A vessel with ordinary usage lasts from 10 to 14 years without any essential repairs. The vessel had not, to my knowledge, met with any serious accidents previous to the collision. She appeared to have been well used and taken care of. She had, I think, been in pretty general use, but in dull seasons I think she had been once or twice laid up for caulking and painting. Her registered tonnage was 197 and some 95ths. She was repaired last this last spring, at Milan. She had no repairs particularly—I mean no ship-carpenter work of any amount. She was overhauled and had some small carpenter work done, and was caulked and painted and her rigging refitted and a new set suit of sails put on. The expense then laid out on her I have not footed up, but I should think it would be something like $1,200. I superintended her repairs. That included the use of dry dock and caulking her bottom. The dry dock was used a week or more, but I do not know how much it cost. I think the charge for dry dockirg was one shilling per ton taking into the dock, and some charge per day for the time she was in the dock, but the amount charged I cannot state. The way I understood that the 4,433½ bushels of wheat were the property of Stevens and Ryan was that I saw them buying a part of it, and that I saw part of it tallied in, and this was the amount by our tally books and shipping bills. We receipted for that quantity. I did not tally it in myself. The mate generally keeps the tally. The shipping bill was lost with the vessel. There were two shipping bills. Both were lost at the same time. The shipping bills were not duplicates. One was 4,000 bushels shipped by Lockwood for Hickson and Mack, and other for the 4,433½ shipped by Stevens and Ryan. On the bill for Hickson and Mack only the 4,000 bushels wheat were entered. The other bill contained the 4,433½ bushels of wheat, 250 barrels of flour, the boxes of merchandise, and four casks of ashes. The other three casks of ashes were, I think, on another bill, and I think they were shipped by Skinner. I think there was nothing else on that bill. I think there were no goods that were not entered on some shipping bill. I don't know whether I have a pretty good memory or not. I saw these three shipping bills. I first saw them when I got them from the office. I think I receipted the duplicates of the bills of lading by signing them myself. I have not seen those since I signed them. At the time I gave these shipping bills I gave these receipts. The receipts were duplicates of the bills of lading, the shipper signing one set and I signing another. I took the shipping bills and put them in my pocket, and took them out of my pocket and put them into the desk when I went on board. I did not look at that time at the bills. Did not look at them after the time I received them. I never saw them after I put them in the desk. After I have once seen the bill of lading I can remember accurately what is on board, unless the items are very numerous. I probably should not remember the items long after the trip was accomplished; but I

think I should remember till I got to Buffalo. The wheat was all consigned to Jason Parker. I don't recollect whether the flour and ashes were consigned to Parker or not, but both parcels of the wheat were. There was nothing peculiar about the shipment of the wheat or its delivery to me, except the calculation of what I needed for a full load, and I think I can generally remember very accurately as to the quantity taken. I was to have, to load the ship, 8,433½ bushels, or about that, and I think that was just the amount. We might have called 27 pounds a half bushel. I left Milan on the trip referred to on the 21st June, or 22d, and went down the river to take in some freight from the lighter to finish our load. The freight was taken in without anchoring at what we call below the bar. We there put on wheat, some of both lots. We took it from a canal boat, there called a lighter, although built for running on the canal. I don't recollect the amount we took on board from the lighter. The canal boat came down with the vessel. We tallied right along without making any distinction between that taken on to the vessel and that put on at the lighter. I did not go on the vessel, but went down by land from Milan to Huron. We left Huron about 6 o'clock on the evening of the 22d June. The wind was then blowing from the northwest as I went out of the piers. Perhaps 5 or 10 minutes after getting out into the open lake—it might have been a little before or a little after 6 o'clock—the wind was (at that time) pretty fresh, what they call a whole sail breeze. We took our course directly after we left the piers, and steered first northeast. I continued on that course about an hour and a half. During that time the wind began to lull and the sea to run down. It began to lull pretty soon after I got outside. It did not freshen again that night. For the first hour after I left Huron, I think we made about 9 knots. The wind was variable, and the second hour, I think, less. After about an hour and a half, I directed the man at the helm to keep her northeast, ½ east. The sea having run down, she did not make so much leeway. I think I continued on that course about two hours. We then changed to northeast by east and steered that course until the collision, as I suppose. That was the course when I turned, and I ordered it continued.

When we commenced steering northeast by east, I think we were about abreast of Avon Point, being about north northwest of the Point, and about 15 miles distant. Avon Point is some ten miles below Black River. That was not on a due course to Buffalo. A due course from the point where we commenced running northeast by east would have been east northeast; but I run the course I did, allowing the difference for leeway. If I had had a fair wind, I should have run east northeast. Before 9 o'clock in the evening it was some cloudy, and somewhere along about 9 o'clock the clouds cleared away, and it was then bright and clear. There was no moon. At ten o'clock it was clear and light to the northward, caused by northern lights. About the same at 11, and also at 12. It was as light at

12 as it was at 9 and 10. It was not hazy on the water during any portion of the evening. I turned in at 12. I think I got asleep pretty soon. I was asleep just previous to the collision. I awoke on hearing a noise on deck. I did not know exactly what the noise was, but I thought I heard it said the steamboat was coming into us. There was something said about a steamboat, and I jumped up immediately. I had my pantaloons and vest on, and went at once, without dressing, except to put on a hat, on to the deck of the vessel. I did not get on deck before the collision took place, but was on the cabin floor when it occurred, just as I got up. I came on deck, and found water on the deck at the mainmast. The flour was stowed on the deck near the rail. The water was on the lee side, next the steamboat. I can't say how much water there was. At the middle there was no water, and perhaps a foot or a foot and a half deep at the bow. The steamboat had not backed off when I got on deck. She backed off some two or three minutes after I got on deck. I came out of the cabin and went forward to the mainmast, and asked if the schooner was sinking, and some one answered, "Yes." I then went aft, and cut away the gripes and raising lashings to the boat of the schooner, which was at the schooner's stern. I cut them away, and then I heard some one sing out, "Take the woman on board the steamboat,"—(the mate's wife was on board,)—and I then went forward. Some one on the steamboat asked if there was a woman on board, and they were answered, "Yes." I went forward to the bows of the steamboat. There was a line passed down from the bows of the steamboat to the schooner, and I saw Clifford, one of my men, climbing up on the line. I took hold of the line, and told Wilson to hand his wife to me and I would hand her up. He did not do so, as the steamboat then backed away from the vessel, and I went up the line on to the steamboat as she backed off rather than to get wet. I staid on the bows of the steamer until I saw the schooner disappear, which was in two or three minutes. The woman and those on the schooner came on board the steamer in the yawl, so that no lives were lost. I hear readily and quickly when there is a noise after I have turned in, and I turn out as quick as I can on hearing a noise. I got up as soon as I heard the noise at that time, and when I turned in it was clear; but was not so light at the time of the collision as when I turned in. The northern lights were not so bright. It was not hazy on the water at the time of the collision. There were no clouds that I could see. It was a clear starlight night. I looked all round. No clouds, unless a small white cloud—what we call a clear, starlight night. When I first came on deck there was no very great excitement. I think I was quite cool—am generally so in any emergency. I think I went about as fast as was necessary, and it was rather a hurrying time. I looked at the stars and the clouds when I was running about, but did not look at them for the purpose of determining the position of the vessel. I did not look at the compass.

After the vessel disappeared, I met the captain of the steamer, Capt. Robert Wagstaff. I had not before had any particular acquaintance with him, but knew him by sight. I am sure it was Wagstaff I had this talk with, as I have sworn. I learned from Wagstaff that he was in bed when the collision happened, or that he was not in charge of the watch. I think, but am not positive, that he said he had turned in or was in his room or in bed. I do not know as he had ascertained the time of night before I had the conversation with him. I do not know the speed of the steamer at the time the collision occurred. I think, from the strength of the breeze, the schooner must have been making from 5 to 7 miles an hour. When I got on board of the steamer, and when I first came up and found her on the schooner, I should say the steamer was headed north northwest. I judge from the direction of the schooner, and her sails being full, and the course of the wind. I think the vessels lay about a point from a right angle. I had no interest in the vessel. I had no interest in any part of her cargo. I was paid for my services by the season, at so much for the season. My pay did not at all depend upon the amount the vessel earned.

Direct examination resumed.

A chart is shown the witness, (being Burke's Chart of Lake Erie of 1848,) and says the position of the vessels as marked in pencil on this map, in reference to Cleveland, is correct. The general correctness of this map as published, is conceded by both parties, and it is marked "Exhibit A, Oct. 5, '52, Hall."

William L. Carpenter: I reside at Dunkirk, and my business is printing and publishing. I was on board the Northern Indiana at the time of the collision with the schooner Plymouth. I was just before the collision standing and looking into the engine-room. I was leaning against the casing of the door, on the side of the engine-room, and was looking in. I went to that door from two to three minutes before the collision. I went from the saloon door to the door of the engine-room. They were nearly opposite, but the engine-room door, if I recollect right, was a little aft of the door of the saloon. The room being open and the engine in motion, I went to the door to look at the engine. When I first went to the engine-room door, there was no one in the engine-room I heard the engine bell ring. It struck twice or three times at first in rapid succession. No one was then in the engine-room. It struck again at an interval of a few seconds. The same thing was substantially repeated. At the time the bell struck the second time, a man passed and went into the engine-room, and very soon after there were a third striking, and a gentleman came into the engine-room from the opposite door. The gentleman who came in last said, "Why don't you stop her?" and they both instantly grabbed for the starting bar, and the engine was stopped. The second and third ringings were nearer together than the first and second. The collision,

the third ringing, and the stopping were all at about the same moment —so near together that you could hardly distinguish. I saw the Plymouth. I do not know who the persons were that came into the engine-room. It was perhaps a minute after the collision that I saw the Plymouth—perhaps a little more or a little less. The steamer had not then backed off, and I was looking at the schooner from the upper forward deck. The schooner then appeared to be under the steamer. Without then having my attention particularly called to it, I should say now that the steamer struck nearly at a right angle. I think the schooner was struck a little forward of the mainmast. I saw the schooner after she backed off. I saw her sink. She had lights on her, which were burning. They were lamps. One, I think, was moving on the deck. The other at the main rigging—I can't tell where exactly. I saw a red light on the vessel, but I can't tell where it was, and I can't locate the colors of the lamps. I can't tell whether the moving light was red or bright. Hon. F. H. Ruggles was the only person I left in the saloon, and he did not come out of the saloon with me, and was not in the engine-room with me. I think all the bells I heard were rung within a minute or two minutes, or within three minutes, to be safe. More than one minute and less than three.

Cross examined: I am not a nautical man. I had been in the saloon about half an hour before I went to the engine-room. I went into the saloon with Mr. Ruggles and an assistant editor of the New York Tribune, whose name I did not know. We had something to drink, and smoked a cigar in the saloon, and talked of the pleasure party and politics. The boat was out on a pleasure trip, and that was my business also. I was one of the guests of the company. I had drank a little when I went into the saloon. I can't say whether more than once. I was in a good condition to remember all that transpired, for aught I know now or knew at that time. I suspected, though I did not know, that the bells rung in consequence of an apprehension of a collision. I suspected that, because the weather was not bad, and we were near no port, and I knew no other occasion for the ringing of the bells. I did not then know, and do not know now, the precise form of striking for stopping or backing, but I inferred from the rapid and hurried manner of the striking that there was some emergency. These were merely conclusions. I went forward from the engine-room on to the guards and passed up the narrow stairs to get on to the upper deck. I ran. I had been up there several times during the afternoon and evening, and therefore knew where to go.

Direct examination resumed.

The night was not very light at the time of the collision, but the stars were shining. I did not observe that it was cloudy.

Cross examination again.

My attention was not particularly called to the state of the weather.

Adjourned until 9 o'clock to-morrow morning.

WEDNESDAY, October 6th, 1852.

Libellant's witness continued.

Philo M. Clifford sworn, says: I reside in Milan, Ohio. My business is sailing. I have followed that business six seasons before the mast. I was on the Plymouth at the time of the collision referred to by the other witnesses, and had been on her part of 3 seasons, and some 12 or 13 months in all. I was on deck at the time of the collision. came on deck at 12 o'clock on that night. I was the lookout-man on the deck. My position was on the forward part of the deck, and I was there at the time of the collision. I first saw the steamer's light some 15 minutes before the collision. The light was about a point or a little more off her lee bow—the starboard bow. From the time I made her light, I saw the steamer's light until she got forward of the schooner's beam. I saw another light to windward, and went to windward (larboard.) Before that, I was standing on the lee side forward, and went over when I saw the light to the windward. I stood about a minute on the windward side, when my ear caught the fluttering of the steamer's wheels more plainly, (by the fluttering I mean the noise of the wheels in entering the water,) and I then looked to the leeward, and saw the steamer was then steering right for us. I halloed to the man at the helm, (Mr. Clark Stevens,) and told him the steamboat was steering right on to us. The steamer still continued apparently to steer for us, until she struck us. She hit us nearly amidships, on the larboard side. The steamboat's speed was not slackened. I know this, for her wheels were revolving forward until she struck us. The wheels were reversed after she struck us, and the steamer was backed off. About ten minutes before I made the lights of the steamer, I went aft, because I thought the wind was changing and we should have to change the sails, and look at the compass, and she was headed northeast by east. I then went forward again. The vessel did not, I think, change her course from northeast by east from the time I went aft up to the time of the collision. If she had altered her course, I should have known it. We had a clear light at the jib-boom—a plain white light—a globe lamp, and on our pawl-bit a green light. Both these lights were burning and were good lights. The one on the pawl-bit was a signal lantern with two sides red and two green. The red sides were covered up with a tin or other metallic covering or casing. These lights continued to burn after the collision. I saw them burning after I got on board the steamboat. At the time of the collision, the wind was about north northwest, but was veering a very little to the northward. It was between north and north northwest. The night was clear and starlight, with no moon to be seen. Our vessel did not luff up after I saw the steamer's light before the collision. The sails of the vessel were on our starboard side and were filled up by the wind. There was on the deck at the time of the collision the mate, John Wil-

son, Clark Stevens, the wheelsman, and myself. Our sails were bright new sails. They could be seen in the night farther than old sails. I think the steamer cut half-way cross the deck of the schooner, and broke in the vessel half-way across the deck. The steamer leaked after the collision. I saw the hole which was broken into her by the collision. The hole was just abaft the stem on the larboard side. The schooner was struck amidships, as near as I can tell. I can't say it was either before or after the midships. At the time of the collision I was standing on the lee side of the foremast, with my right hand against the mast, and looking towards the steamer and aft.

Cross examined: I am 28 years old. I sailed on a good many vessels before I went on to the Plymouth. Sailed on a good many out of Milan. Most of the time I was before the mast. Since the collision I have been mate of a vessel, but always before that time I was before the mast. I left Milan in the Plymouth on her last trip. I think it was on the 21st June. On that day we run down to the lighter-bar so called. I cannot say whether we laid there one night or came down to Huron and laid there during the night; but I think we laid at the bar one night and went to Huron about ten o'clock that day; reached Huron about, I think, about 10 a. m. It is 8 miles from the lighter-bar to Huron. We stayed at Huron until we finished stowing her freight. We left Huron about 6 o'clock in the evening. There was wind from nearly northwest when we left the piers at Huron, and the same when we started to go out from Huron. It was then blowing pretty fresh. It did not take many minutes, perhaps ten, from the time we let go until we were outside the piers. The wind was blowing fresh from about the northwest when we got outside the piers. It continued to blow in the same direction about an hour and a half, I should think, and with nearly the same force. It hauled a little to the northward then, and it was hauling by times to the northward and veering backward and forward until 8 o'clock, when I turned in, and knew nothing more about it until I got up at 12. I think for the first hour and a half we made about nine miles an hour. For the next half hour we were making a little less speed. After I came out of Huron I saw Capt. Kirby frequently. So far as I knew he was doing his duty—giving orders to the men. I don't recollect of his doing anything else in particular, except he was at the wheel steering when we came out of the piers. He was along the windward side of the cabin when he gave orders. He gave me the course at 6 o'clock, when I took the helm. He told me to keep her steady, at one time, when he gave an order; and at another time, when he had been steering northeast, he told me to keep her northeast by east, ½ east. This was about an hour and a half after we left the pier. He did not tell me how long to keep her northeast by east, ½ east, but I did keep her on that course while I was at the helm, and I gave that course to the man who relieved me at the helm at 8 o'clock. I don't now recollect who relieved me. I think I saw the captain walking fore and aft

on the deck at different times, and that he remained on deck until I turned in, or most of the time at least. I can't say who called me when I got up at 12 o'clock, but I think his name was Richard Eggleston. When I first got up I took my station forward as a lookout. I think Eggleston was on the lookout when I came on deck. He did not come down to call me, but he took a handspike and pounded on deck and then halloed. When I was at the helm, Clark Stevens was on the lookout. When I got up at 12, the wind was not blowing so fast as when I went to bed. It was not then so light as when I turned in. The northern lights had shown a very little in the early part of the evening, and they were quite light when I turned in. I recollect no change in any other respect, except the wind had hauled a little more to the northward. The wind was between north and north northwest when I came on deck at 12, and remained there until the collision, except that it veered back and forth about a point. I think it was from an hour to an hour and a quarter after I came on deck before the collision. It was not more than four or five minutes after I discovered that there was danger of a collision before it occurred. I can say confidently that it did not exceed four or five minutes. The minute I saw she steered for us, I halloed to the man at the helm. I halloed to him as soon as I discovered there was danger of a collision. I think I said, "Clark, the steamboat is steering right for us." That, I think, was the first that was said, and I heard nothing else until Robert Hastings came up out of the forecastle. He came on deck immediately —not more than half a minute after I halloed to Stevens. He was on deck in half a minute after I halloed. He turned right round and called the boys as soon as he got on deck. He told them the vessel was likely to be sunk, or something like that, and they tumbled out as fast as they could. It could not have been long, certainly not more than a minute or two, before they were on deck. The next that was said that I heard I can't remember, as I did not stop to hear long conversations after that. They were coming up on to the deck at the time when the schooner was struck. I say that the course of the schooner was not changed at all from the time I discovered that there was danger until the steamer struck us. When I discovered that there was danger of a collision, I could see the steamboat distinctly, so as to see how she was steering. I know the speed of the steamboat was not slackened, because her wheels were not stopped at all. If they had been reversed, they would have been still moving; but they must stop them to reverse them. It would take half a minute to stop and reverse them. I can't tell the length of time the wheels must be at rest in order to reverse them. When I saw there was danger, the wheels were revolving forward, and continued in that way until the collision. The wheels were not stopped until the collision occurred. The steamer could not have been more than 40 rods from us when I discovered that there was danger. I should think she was making 17 or 18 miles an hour at the time I first made her light, and so on up to the time of

the collision. I should not say that, going at that speed, she would cut us through. We had a pretty stout centre-board box. It was made of oak and iron. There was not much sea at the time of the collision. It was what I should call a kind of chopped up sea. It dashed some against the side of the vessel. I think no clouds were flying, but there might have been light scuds or small white clouds stirring. The wind was north northwest, and we were steering northeast by east. We could lay in five points to the wind, but were not doing it then. We were about a point free most of the time, as the wind veered around. This direction, and the course of the wind, would not give us about three points free. Had nothing but tea and lake water to drink that night.

Direct examination resumed.

If the wind had not been veering, but had been steady, we should have had two points free. About one point was lost by the veering of the wind.

Cross examined: One of the lamps was burning oil, I think, and the other spirit gas. The green light was, I think, burning oil.

By the Court: I recollect distinctly noticing the color of the lights on the pawl-bits after I came up at twelve, and am confident that the green side was the one exposed forward.

Clark Stevens sworn, says: I reside at Massena, St. Lawrence county, N. Y. I am a seaman. I have followed that business between 5 or 6 years—three years of the time on salt water, and the greater part of the residue of the time on the lakes. I was on the Plymouth at the time referred to by the other witnesses, and when the collision took place. I was a hand before the mast. At the time and just previous to the collision, I was at the helm, and had been there from 12 o'clock. During that time the Plymouth was steering northeast by east. She continued that course up to the time of the collision. I know she was steering that course, because the compass was before me, and I looked at it to see the course. From 12 o'clock to the time immediately before the collision, John Wilson, the mate, Philo Michael Clifford, and myself were on deck. It was our watch. We had lights on the vessel. She had a bright light on her jib-boom. That was burning when I came on deck at 12. There was also a green light burning on the pawl-bits at that time. I could not see the lamp on the jib-boom from the helm, but could see the reflection of it on the jib. The other light, the darkened side was towards me, but I could see the reflection of that also on the jib. I could see the green reflection on the jib. I did see the reflection between 12 o'clock and the collision. I recollect seeing the reflection of these lights some 10 or 15 minutes before the collision. I saw the green

light after the collision. I did not notice the other. The green light was still on the pawl-bits when I saw it after the collision. I do not know as I ever saw any light on the schooner that would give a red light, except the signal light, which was on the pawl-bits. It was a clear starlight night. The wind was variable at the time of the collision, and from the north to the north northwest. The wind was light at the time. Our sails were on the starboard side of the schooner. Our sails were bright. They could have been seen such a night as that, with the lights we had, I should think, four or five miles. The first I saw the lights of the steamer to know it was her lights, was but a few minutes before the collision. I did not until then know they were the lights of a steamboat. I had seen a light to the leeward before I knew that it was the light of a steamboat, and it was 20 minutes after that, I should think, before I could determine if it was the light of a steamboat. The light was still to the leeward of us when I determined that it was the light of a steamboat. I think the steamer was pretty close to us when I determined it was a steamboat, but I cannot state the distance. I should think she was not more than her length from us when I determined it was a steamboat. Up to that time I had not determined what it was. It was very frequent to see lights. The reason I did not determine until that time that it was a steamboat, was, because I did not see the light but once, and did not take particular notice then. The sails of the schooner also obstructed my view. The steamer was steering about square across us, as near as I can determine, at the time I determined it was a steamboat. She was coming very quick, and seemed to have her full headway on. I don't know whether or not her wheels stopped before she struck us. She struck us about midships. The mate Wilson was standing just aft the mainmast a few minutes before the collision. There was no shouting on the schooner until we saw there was danger of being struck, and then there was from the deck of our vessel. The men forward called to me that there was a steamboat coming. They halloed to me to put my helm up, as there was a steamboat coming into us. There were, I think, two voices, but can't be positive that there was more than one. By putting our helm up, I mean putting it to windward. By putting our helm to the windward, the head of our vessel would be thrown to leeward; but the vessel had not time to have changed her course before the collision, although I put my helm up as directed.

Cross examined: I am twenty-five years old. I was born in Massena. I am not a married man. I had been on the Plymouth from the 14th of May, 1852. I shipped on her at Toledo, Ohio. I was paid by the month. I have been in Mr. Walker's employ since the Plymouth was lost—Mr. Walker, of this city, who has a brother at Milan. I don't know as I was ever in Mr. Ganson's office but once, and that was about two months ago. I went with Capt. Kirby at that time.

We there talked over some of the matters about the collision. Capt. Kirby did not tell me how it was. Capt. Kirby did not tell me what I said at the time. I told Mr. Ganson a part of the circumstances. I told him that I was at the helm at the time, and the circumstances much as I have told them here. I told him what course I was steering, and the men that were on deck. Did not tell him who was to blame and who was not. I can't tell how many persons I have talked it over with. I have told the circumstances to a good many persons since the collision. I did not take down the course we were steering and the course of the wind, for the purpose of remembering. I can remember it without. I can remember these circumstances in reference to other times when I have been steering, but not all. I left Milan in the vessel. We left about 10 or 11 o'clock in the forenoon of Monday the 21st June last. That day we went through the canal into the river and below what is called the bar. We got there just before dark, and stayed there all night, and left there about noon the next day. We got to Huron about 7 o'clock p. m., and stayed there about two hours. We left there about 6 o'clock, and we got outside the piers in 10 minutes or less, I think. When we were passing out of the piers, I was stationed aft at the main sheets, and continued there until we got outside the piers, and I then went forward to clear up the rigging and wash the decks off. When we got through with that, went to supper about half past six. Were at supper some ten or fifteen minutes, and when I came out I went to the helm. I continued at the helm ten or fifteen minutes. I relieved Clifford at the helm. Clifford relieved me at the helm after he got his supper. He continued at the wheel after that until 8 o'clock. I don't know who relieved him. Clifford had been at the wheel but a few minutes when I relieved him, to allow him to go to supper. He had then had the wheel 15 or 20 minutes, I think, and Robert Hastings had had the wheel before Clifford. Robert had been there from Huron until Michael relieved him. Michael was called a good helmsman. I don't know as I ever heard anybody call him the best. He was a good helmsman. Capt. Kirby, John Wilson, the mate, and Richard Eggleston, Robert Hastings, Hugh Hastings, and Mrs. Wilson supped with me. I was out where I could see until I went down to supper. I turned in at 8. I think I saw Capt. Kirby at the helm a short time while we were hauling the main sheet. I recollect seeing him there. This was soon after we got out of the piers. I went to the helm at 12. Richard Eggleston called the watch. I relieved Robert Hastings. I saw Clifford there, and he got on deck before me. I recollect his calling to me that the steamboat was coming into us. It was about that time I first discovered there was danger. He spoke this before I discovered the danger. I put my helm up according to orders, and we were struck in less than two minutes after he told me a steamer was coming into us. I think it was not much more than one. I think it was about one minute. The vessel had not time to mind her helm

before we were struck. I saw a light at the binnacle—a bright light —besides the lights at the pawl-bits and the jib-boon. The lamp was not so but what it could be taken out. The light was not taken out when I was at the helm. That light was not visible on deck, except from the after part of the cabin. It could not have been seen on the steamboat at any time after I saw the steamboat. I left the helm at the time of the collision. I went and commenced clearing away the boat at the stern of the vessel. I did not take the binnacle light with me, and no one moved it from the binnacle. There was a light on the vessel after the collision besides the three I have numbered. This light was a globe lantern. I saw it setting on deck. I don't know who put it there. It was a bright light, not colored. I saw no other light than these four on the deck of the vessel at the time of the collision. If there had been others, I think I should have seen them. I never saw any red light on that vessel except the one at the pawl-bits. I got on to the steamer from the yawl. I did not see Capt. Kirby from the time he came aft, when I was clearing away the boat, until I saw him on the steamboat. I did not see that he appeared to be agitated. He went away from me after clearing away the boat, and I did not see him until I saw him on board of the steamer. After I cleared away the boat, I went forward, leaving the boat hanging by the hooks of her tackles. The captain appeared very cool. I was not very badly frightened. It was not quite as light at the time of the collision as it was when I took the helm. The difference was made, I think, by some few scuds running over the sky. There were no black clouds. It was not hazy or smoky on the water at the time of the collision. I do not know Charles Grant, who is sitting in court and is pointed out to me; but I think I saw his face on the steamboat that evening. I had no particular talk with him about the accident. I talked with the man who said he was at the wheel of the steamboat, and I think this man Grant looks like the man. I passed but a very few words with the man. I did not tell Grant that I supposed I had committed an error in luffing up across the bows of the steamboat, or anything of the kind. I think I told him I put my helm down when the vessel was struck, but I did not tell him I put my helm hard down, and attempted to pass the steamer on her starboard side, or that I had committed an error in attempting to luff up and pass the steamer on her starboard side, or anything of the kind. I don't think I told him I committed an error. The Northern Indiana was white. Perhaps she might show a little plainer white than the sails did. The steamboat might perhaps have been seen that night between three and four miles. I did not myself ascertain that she was a steamboat until she was within about a length of me. The mainsail was in the way of my seeing her for half a mile before she struck us. When she was so near us, and I saw her, I stooped so that I could see under the main booms. Then I saw her.

Virgil Warden sworn, says: I live in Liverpool, Medina county, Ohio. I was on the Plymouth as cook at the time of the collision. I was not on deck at the time of the collision. I saw a green light on her pawl-bits and a bright light on her jib-boom after I came up. They were both burning. I saw them when I went forward to see if any person was in the forecastle. I was about abreast of the green light when I saw it.

Cross examined: The pawl-bits are just at the heel of the bowsprit, forward of the windlass. Did not have to get directly in front of the lamp to see it, as it was square. There was no canvas on the frame the light hung in. There is on some vessels.

Erastus Scovill: I reside in Buffalo. My business at present is in a ship-chandlery store. My business has been that of a sailor. I was acquainted with the schooner Plymouth from the time her keel was laid up to the time of her loss. She was a good vessel. She was in good repair. She was, I think, worth $7000 at the time of the loss. She was worth at least that, and perhaps more.

Cross examined: I take into the account no earnings of the vessel in estimating her value. I don't exactly recollect her tonnage, but it was a little short of 200 tons. I never run her. I have been in company with her a good many times, and she was a good sailor. I should want prompt pay at $7000, if she was my vessel. I consider her worth $7000, cash down, considering her repairs last spring. When she was new, I think she was worth $9000. The price per ton for building varies. I have known vessels built for $23 per ton, and $25 per ton and upwards for rigging. I had one built that cost $38 per ton for the hull. That was in 1847. There was not a great run for vessels for that year. The fore part of the year was a very good year. The price per ton does not vary very much by the size, but the larger the less it costs per ton.

Rumsey R. Brown sworn, says: I reside in Buffalo. I sail a vessel. I have sailed a vessel 8 seasons, and have sailed in all about 17 seasons; 8 as captain. I knew the schooner Plymouth. I think I have known her ever since she came out, but I can't recollect the number of years. She was a good fair vessel. Her condition last spring was good. Her value in June was about $7000.

Cross-examined. I get at the value from the value of other vessels. One of them is the Osceola, which I run. She is worth more than $7000. I think I have compared views with Capt. Scovill to-day. I don't know as we talked it over to-day and agreed as to the price. I think I valued the vessel at $7000 on the books of the insurance company in which I was then engaged. I never had a vessel built by the ton, and don't know the ordinary price per ton for building such a vessel.

Recess to 2 p. m.

2 p. m., libellants proceed.

Benjamin Bagnell: I reside in Buffalo, and am now employed in an insurance office as marine inspector. I have been a ship carpenter. Was so from the time I was 15 up to within two years, at Plymouth, Mass., a part of the time, and the balance at this place and in Rochester. I know the schooner Plymouth. I have been on board of her to see what her condition was, and what kind of a vessel she was. I have been alongside of her this season, but not on board. The vessel in June last was worth, I should think, $6,750.

Cross examined: I think I should not be willing to put the value lower for cash. The tonnage was 197 tons. I keep a book of the tonnage of vessels on the lake, in which I state the tonnage from inquiry.

John Stevens: I reside in Milan, Ohio. I am a produce dealer, and am engaged in forwarding, storage, and commission business—general warehouse business.

I shipped on board the schooner Plymouth 250 bbls. of flour and 4 casks of potash, the property of Cobb & Tyler. That was, I believe, all they had on board. It was shipped on the 21st of June, 1852. This property was consigned to Stevens & Ryan, at Milan, by Cobb & Tyler. The flour was worth at that time at Milan from $4 25 to $4 50 per barrel. It was of a choice brand that they had been in the habit of getting up to send to Westport, Conn., for retailing. They had been in the habit of sending it there for a number of years. The weight of the potash (net) was a few pounds less than 2,300. I think 2,293 lbs. They were worth $4 50 for each 100. I did not ship the wheat of Mack & Hickson. It was put on board the vessel by William E. Lockwood. Mr. Hickson made a contract with me to carry it on board the Plymouth, a day or two before it went on board. That quality of wheat was then worth 84 cents on board vessel.

Cross examination: I have sat by the libellants' counsel during a part of this trial. I have an interest in the suit, which was brought in my name. The Insurance Company have not paid me my loss. They have not paid me my loss directly. I do not consider that I am in the employ of the insurance company. They have never employed me to attend to any matter. I do not know as I have prompted Mr. Ganson, except in reference to my own interest.

DEFENCE.

Claimant's witnesses.

Almon M. Clapp sworn, says: I reside in Buffalo. I was on the

Northern Indiana on or about the 23d of June last, at the time of the collision with the Plymouth. At the time of the collision I was in the captain's room. Was there when the vessels struck. I was at the time lying on a mattrass on the floor, with my clothes on. The first I heard was the ringing of the stopping bell of the engine. That was what first started me. The collision took place after that very soon. I can hardly tell the number of seconds, but a very few seconds. I immediately sprang to my feet, and ran to the window and looked out. I was on the larboard side, and just forward of the wheel-houses. I then saw the two vessels together, and persons on the schooner were getting into their boat. The captain's room was on the upper deck. I judged that the vessel, schooner, was struck nearly at right angles. When I saw her, her stern seemed to be swinging round to the larboard side of the steamer. I saw no lights on the schooner. I did not go out of the captain's room. I stayed there until I saw the schooner go down. I can't tell how long before she went down, but only a very few minutes. I came out of the captain's office perhaps within fifteen minutes after the schooner went down. I went out as soon as I found the steamer was leaking. The night was not stormy, but clear and still. There seemed to hang over the water some distance a gray mist, which I have sometimes noticed in clear nights. I can't tell how far above the water the atmosphere was thick. I had no opportunity to judge how far a vessel could be seen. The schooner was not entirely visible at the time, though you could see that it was a vessel, and I could just perceive the general outline of the hull. In that condition of the atmosphere I should hardly think a vessel's sails could be seen 50 rods; but this is a mere matter of judgment. My impressions were at the time that the wheels were stopped as soon as steamers are usually stopped after the ringing of the bells. I judge this was so from the motion of the boat and its being deadened. I could not see the wheels from the window.

Cross examined: Captain Wagstaff, I think, was not in the captain's room with me. The room was the captain's sleeping room. I do not know where the captain was. Arthur Edwards, Zachariah Chandler, H. M. Kinne, James Clark, of Detroit, and another gentleman of Detroit whose name I do not know, were in the room with me. There was a light in the room where I was at the time of the collision. Kinne was asleep, I think, but Edwards was up. I was not asleep just before the collision. I was talking with Mr. Edwards just before the engine bell rang. The ringing of the bell startled me, but I was not asleep before the ringing. I think it was 10 or 15 seconds after the ringing of the bell before I reached the window. I was some ten feet from it. I felt the shock before I got to the window. I did not feel it until after I got up. I can't tell at what particular period the wheels stopped, but my impression was, almost instantaneously with the ringing of the bell.

I should think the usual time after, and that a very few seconds is the usual time. The wheels had not stopped when I heard the bell ring. I think not more than from 5 to 7 seconds elapsed after the ringing of the bell before I supposed the wheels had stopped. I think there was not much time, but some, between the stopping of the wheels and the collision, but not much. I heard the bell ring three times, or three or four times. I can't say whether there were several taps of the bell and then intervals, or only single taps with intervals between. I think the wheel stopped from 5 to 7 seconds after the last ringing of the bell. When I went to the window, the hull of the schooner was lower down than I was. I can't tell whether I should discern the outlines of a vessel as well when looking at her down upon the water in that way as when looking at her against the sky. I have not experience enough in these matters to tell. I think my impressions about the character of the weather when I was looking at the vessel from the window were not much affected by my having been in a room where there was a light, and looking out of it. My vision may have been affected by this circumstance, but it did not occur to me at the time that it was. When I was in the window, there was not much light thrown out of the window, as Capt. Edwards had his head out of one window, and I mine out of the other. It was not a foggy night. The haze was not very dense or very light. A little thicker, I think, than the gray of the morning. I saw no vessel that night after I got out on to the bow of the boat, but I observed the haze after I went out.

Edward Y. Norton sworn, says: I reside at Monroe, in Michigan. I was clerk of the Northern Indiana at the time this accident happened. At the time of the collision, or when I first heard the bells ring, I was in bed. The bell rang as I suppose, for a checking or stopping bell. That was what woke me up. I was asleep. The checking bell means to lessen the speed of the boat. The first thing I did after I heard the bell was to jump out of bed immediately. I was about amidships in the upper cabin. As soon as I got out of bed I heard the backing bell, and I went immediately forward. I thought the engine answered as soon as the bells were rung both times. I thought so from the difference of the working of the engine. I went immediately forward on to the upper deck. When I first got out forward, I could not see anything. Before I got more than about halfway across the cabin, I felt the shock, and I thought we had run against a rock. I went to the extreme bow of the boat to see what was the matter, and by looking I could discover the outline of what looked to me like the outline of sails. Nothing very distinct about it. I passed through the cabin lengthwise in going forward. I think I asked some one what the trouble was. All I could see was the outlines of the vessel, which appeared very indistinct to me. The atmosphere appeared very thick and hazy. I stayed up after the colli-

sion all the rest of the night. I was out on deck and all round. The hazy condition of the atmosphere continued a good while. I thought it did not get very clear until we got to Cleveland. I have been on boats most of the time since 1839. In that condition of the atmosphere I do not think that a vessel could be seen and known that it was a vessel at a distance of 10 rods. As I stood forward looking at the schooner as the stern came round to the larboard side of the steamer, I saw light in her binnacle. I saw no other light on her. I think in that atmosphere a man could not see which way a vessel was steering 8 or 10 rods off. I don't know as he could do it as far as that.

Cross examined: There was some one sleeping in the room with me, but I don't recollect who. It was not my regular place for sleeping. I heard the bell ring twice. I was dressed, except my coat, when I was in bed. I jumped out as soon as I heard the first bell; jumped out as soon as a man could possibly get out. I stopped to put my coat on. I stopped for that purpose perhaps a quarter of a minute. From the time I got out of bed until I got to the place where I felt the collision, not more than a minute elapsed. It might have been a minute, and might have been less than a minute. I don't know as the wheels of the engine had stopped. I don't know that the bell I first heard rung was a checking or a stopping bell. It was one or the other. The second bell I heard, I thought at the time, was a backing bell. There were different modes of ringing for a checking and stopping and backing bell, but I can't now tell how they were rung on board the Northern Indiana. I supposed the last was a backing bell, and the first either a checking or stopping bell. I can't tell what the difference was between the two on our boat. It was a kind of instinct that made me judge that the first bell was a checking or stopping bell and the last a backing bell, and I judged also from what I had observed when these bells were rung on our going into port. I only swear to my impressions, and not positively, that one of these bells was a backing bell. When the second ringing took place, I was, I think, about half-way through the cabin, going forward. I had not felt the shock before that, but it was not far from the same time, and before I got out of the cabin. The atmosphere was very thick and hazy. I had no opportunity to look at any other vessel that night. It was, I think, clear overhead. This atmosphere or thick haze was down low. I can't say how high it extended. On shore it might have been perfectly clear. When I was examining the steamer, I stood on the extreme forward part of the steamer's deck. It was very narrow forward, and I stood on the extreme point of the steamer. I could hardly discern the outlines of the schooner, and could not see how far we had cut into her. I don't think there was any backing off after I got to the front part of the steamer. I could not tell when I was forward whether the engine was working or not. My impression

was that the vessel sunk in 5 or 8 minutes after I went out. The steamer let off steam after the collision. There had been no steam let off at the time I went forward, to my recollection, and none while I was forward. I stood forward about, perhaps, ten minutes, but not more. The vessel's hull had gone down when I left. Steam was blown off very soon after or about the time the schooner went down.

Direct examination resumed.

My impression is that the wheels stopped working after the bells rang.

Cross examination resumed.

I think there were two persons sleeping in the room with me, but I can't tell the name of either.

Henry M. Kinne sworn, says: I reside at Buffalo, and am the agent at this place of the Michigan Southern Railroad Company. I was on the steamer at the time of the collision. At the time of the collision I was in the captain's bed, in the captain's sleeping room. I might have been asleep or drowsing when the bells woke me up. I heard the bells ring two or three times, and the wheels stopped before the collision took place. The wheels moved again (after having been stopped) upon the ringing of a new bell, or signal, but I can't say which way they were moved. The collision was very soon after the wheels were put in motion after being stopped. I got up and looked out at the window after the vessel struck and before they blew off steam. The weather seemed to be thick and hazy near the water. I looked out of the window, which was perhaps twenty feet above the water, and the haze seemed on the water. I don't recollect looking up from the window to see if the haze was above the window.

Cross examined. I heard the ringing of bells, but I can't tell how many times they were rung. I was awakened by the bells, and after that there was a second ringing almost immediately. There was a second signal by ringing, but I can't tell how many times the bell struck. My impression was that I was awakened by the ringing for one signal; that immediately after I heard another distinct signal, and then noticed the stopping of the wheels; and then after that another distinct signal by the bell, immediataly after which the wheels were again put in motion. Very soon after the wheels again commenced moving, this concussion came. I did not get up until after the concussion, and then I jumped out of bed and went to the window. My impression is there are two windows in the room, and that they were both open. The windows looked out into the water on the left hand side of the boat. I looked out of the window farthest forward. I think no one was looking out of the window with me, but some were looking out of the other window, and some had gone on deck. If a

person put his head out, only one could look out of the window at a time. There were not more than 30 seconds from the time the wheels commenced moving to the time of the concussion. I should think there were not more than 15 or 20 seconds of time between the ringing of the two signals that I heard distinctly. From the time the wheels stopped until the concussion, it was perhaps a minute. I am confident that the wheels did stop their revolutions. I was in the room next the wheels and could hear them distinctly, and I am therefore confident the wheels did stop before the concussion. I can't say whether the haze was high enough to extend up to a vessel's sails.

Nathaniel Mead sworn, says: I reside in Buffalo most of the time. I am a single man and call it my home here. I am a sailor, and have been a sailor about nine seasons altogether—part of the time on the lakes and a part of the time on the Hudson river, in various capacities, before the mast and so up to mate, and I am now in command of the steamer Empire. I have acted as mate three seasons on the steamers Empire State and Northern Indiana. I have had the command of the Empire State in the absence of Capt. Hazard. Never met with any accident or collision on my watch previous to the collision of the Northern Indiana and Plymouth. I was on the Northern Indiana at the time of the collision, and was acting as first mate. I was standing at the engine bells, just aft the pilot-house, or house in which the wheel for steering is hung. It was my watch, and Charles Grant was at the wheel. The watchman was William Wilkins, and he and myself were on the look-out. It was then the first mate's watch on deck. When I first saw the Plymouth, I was at the bells. I saw a light ahead before that when I was in the pilot-house, sitting on a stool and looking out of one of the windows of the pilot-house. I was then looking ahead, and the windows were low, so that I could look out without any difficulty. I had then been sitting there and looking out the matter of half an hour, for the purpose of watching for the lights of vessels. When I first saw the vessel's light, I should think it was about one point on our larboard bow, and it was a very short time after that—not more than a minute and a half, at farthest—before the collision took place. I did not at first see anything but the light, and that was a bright light or plain light, and appeared very dim at the time I saw it. It appeared, when I first saw it, to be not more than a length and a half of our boat off. Our boat is about 300 feet long. Immediately on seeing that light, I gave the wheelsman the order to "port hard aport" his wheel, and started for the bells. I saw the wheelsman commence immediately to execute the order. When I got to the bells, and as soon as I got to handle, I rang to check the steamer by ringing three strokes, and then immediately rang to stop her by one stroke to back. The ringing was as fast as possible, and preserve the distinction between the signals. I saw that a collision was unavoidable when I got to my bells, and did all I could to stop the boat. The

signals were answered. I discovered the engine was stopped by the motion of the boat immediately after the ring of the bells. The change in the drum of the wheel or its roar in striking the water also enables us to determine when the wheel stops, and the wheel did stop, I should think, nearly half a minute before the vessel struck—time enough, at any rate, to back her wheels some. The wheels were started to back the vessel before the collision took place. I knew that the wheels were reversed by seeing that the water rushed forward from the wheels, and this was a sure sign. I could also see that the wheels were reversed from the motion of the boat. I can't tell for a certainty whether the course of our vessel was changed before the collision, by putting the helm hard a-port, as I had directed. There was not time to change the course of the boat much. I had been looking ahead for some time before seeing the light. The light was a little on our larboard. I was looking out for lights and watching for them. I account for not seeing the lights sooner by the weather being thick, and I think her light must have been shaded in some way. I think if it had been a good light, I should have seen it sooner. The weather was thick, hazy weather. There was a haze standing on the water. I think I was so high that I did not see the vessel until I got upon the platform where the bells were, which was 6½ or 7 feet higher than the floor of the pilot-house, (the deck on which the pilot-house stands.) It was not until I got there that I could see anything but the light. I think the vessel could not have been seen from the deck on which the pilot-house stood. From the platform of the bells I think I could have seen a vessel not to exceed six hundred feet, or twice her length. At the time I first saw the light, I could not tell in what direction she was coming or going, as I could see nothing of the vessel but the light. If I had seen the course she was standing at the time I first saw the light, I might possibly have cleared by putting my helm hard a-starboard and passing under her stern. I don't think we could, either, on reflection. I don't think we could have done any more than we did to clear the vessel, as she was on our port bow and was crossing our track. The steamer's course before the collision was southwest by west, ¾ west, and headed for the middle passage. That was the course she was on when I directed the wheelsman to put the helm hard a-port. The haze had been gathering upon the water from the time I came on the watch at 12 o'clock. When a vessel discovers a vessel ahead on the lakes, we pass to the right, and a sail vessel, with the wind free, passing a steamer, is passed in the same way. (The proof of this custom is objected to, but is admitted, the counsel saying that they object to proving any such custom as between steamboats and sailing vessels and a custom between sailing vessels as irrelevant. The objection being overruled, the libellants except.)

The wind at the time of the collision, as we have it, was northwest, from the northwest, as near as we could calculate. We had no sail to calculate from, but we took it from our compass and the way the smoke

tailed from our chimneys. A vessel sailing northeast by east would have had the wind four points free with the wind at northwest. That would be called having the wind free, not a wind dead after us. Under these circumstances we should take the starboard hand of a light in the night. At the time I first discovered the vessel, she was standing right square across our bow. I did not discover the vessel until I got on to the platform. I can't say whether she was headed northeast by east at that time, except that if we were standing southwest by west, ¾ west and she running directly across our bows, she could not have been standing northeast by east. She must have been headed as high as north by east, or four points from northeast by east The wind was a pretty good breeze. I should think a five or six knot breeze. It had been blowing heavy all day. There was some sea on, but it had run down considerably, and we were going along more easily than when we left Dunkirk. We had on the steamboat two bright lights on the forecastle deck,—between decks,—the main and promenade. There was nothing to obstruct the light forward of them, except some stanchions, and the light could be seen perfectly plain. The lights were globe lamps, but I can't say how they were burning, as I could not see them. We had also a signal light forward and attached to the pilot-house. The light was a red and green light, showing both lights, the red on the larboard and the green on the starboard side. There were also lights about the boat, but there were no other signal lights.

Adjourned to 8½ a. m. to-morrow.

THURSDAY, October 8th, 1852.

Trial proceeds.

Same witness farther examined by claimants.

Witness is shown a chart marked by the Judge, "Exhibit B, Oct. 8th, 1852, Hall."

Witness says: The position of the colliding vessels, as marked on this chart, is nearly correct, as they appeared to me at the time I first saw the schooner's light. I could not see the schooner, but judge that that must have been her position. The course of the steamer is correctly laid down as she was running at the time I saw the vessel's light. The course marked on the chart as the steamer's course is incorrect, it being marked southwest, ¾ west, when in fact it was southwest by west 3-8 west. I have made the course correct on the map by marking the proper course in pencil. The direction of the line indicating the course was correct, but the letters marking that course were wrong. I had looked at the compass about 10 or 15 minutes before the collision, and then had some conversation with the wheelsman about our course striking the middle passage. We were not then much used to steering the course for the middle passage, and we had to calculate our course and to keep the run of it and see at different

times where the course run us to, so as to correct our course, if necessary. We could tell our distance from the shore by the lights we could discover and the distance we had run by our time. I think our compass would give us the true course within a quarter of a point. I should think we were 20 or 25 miles from Cleveland at the time of the collision. I should think about 20 miles. I can't tell the direction we were in from Cleveland, whether we were above or below, (west or east.) The quarter of a point variation I have spoken of, is for the variation of the compass of a steamboat caused by local attraction. The variation in a course may also sometimes arise from the wind, causing the vessel to make leeway, or there may be a variation from bad steering, &c. The second mate, Thomas Craig, preceded me in the watch on deck. His watch terminated at 12, and I then relieved him, and commenced at Dunkirk, and we were both on watch until about dark. The distance from Dunkirk to the place of collision, I should think, was about 145 miles. I think we left Dunkirk about 4 o'clock. We made no port after leaving Dunkirk, and intended to make none till after we were through the middle passage. When I rose at 12, the wind was pretty fresh from the northwest. The wind continued in that direction, I think, until morning, and until it lulled down and died away. There was some little haze on the water. This increased up to the time of the collision. This haze was, I think, high enough to cover a vessel, so that you could not see her until you got pretty close to her. I mean the vessel herself. A good light could be discovered, I should think, about a quarter of a mile. From the condition of the atmosphere and my position I could have seen a good light on a vessel, if it was unobstructed, about a quarter of a mile. I don't know that I saw Capt. Wagstaff that evening after we got outside until after the collision. I can't call to mind that I saw him. I have known Charles Grant, the wheelsman, since the spring of 1851. I think he had sailed with me on the Empire State a part of last season in the capacity of wheelsman, and was with me until she was laid up in the fall. The Empire State is a large and important boat on the lakes. She has the largest tonnage of any steamboat on the lakes. Grant had sailed with me as wheelsman on the Northern Indiana from the commencement of the season up to the time of the collision, and was with me afterwards as wheelsman. He is a skillful and vigilant wheelsman. He has been with me on the Empire State and Northern Indiana as wheelsman in all sorts of weather. Wilkins, the watchman, had been on board from the commencement of the season, and is a hand on the Northern Indiana still. He is a vigilant and skillful man. The tonnage of the Northern Indiana, I should think, was about 1,500 tons. I never saw her register. Her length is said to be 300 feet. Her breadth of beam over all is, I believe, 62 feet. (It is agreed that the length of the schooner Plymouth's keel was 104 feet.)

I observed the cutwater of the steamer after I got to Cleveland.

It was bruised and splintered so as to indicate the manner of the collision. The cutwater was slewed to starboard and a small portion of it knocked off. It was slewed three or four inches to the starboard and a small portion broken off. That indicated that the course of the schooner was across our bows to the northward. The cutwater was made of oak timber, and about 14 inches in width and 8 in thickness, and chamfered off to an edge of three inches across, and this edge of three inches was the front of the cutwater. It was fastened on to the vessel by iron bolts about 16 inches apart and one inch in diameter. I can't say whether there was more than one row. There is nothing framed into the cutwater, but the ends of the planking come against it. These planks are three inches thick. These bolts were bent. From where I sat in the pilot-house the light on the pawl-bits might have been obscured by the jib, if the position and course of the vessels and the wind were as I have stated. Her head rigging and bowsprit might have obscured it. There would have been no difficulty if the schooner had discovered the steamer five minutes before the collision; she might have passed the steamer by going to the starboard. She could have run under the steamer's stern. She could have kept away instead of luffing up, and thus passed us to the right.

The question is asked, "if in his judgment that is the course the schooner should have taken, if she had discovered the steamer five minutes before the collision?"

The question is objected to, (not because the question is leading, which is waived,) because the evidence is inadmissible.

Evidence rejected and the claimants excepted.

The witness is asked whether taking into account the course of the wind, the course the schooner was running, her size, and the size and course of the steamer, and their relative speed, which of the vessels could most readily have changed her course, so far as to avoid a collision, after the danger of a collision became imminent in the judgment of the witnesss? Libellants object to the question.

Objection overruled and testimony taken subject to it. Answer—I should think the vessel could.

Cross examined: The bright lights are generally carried at the end of the bowsprit, at the end of the jib, and the colored signal lights are usually carried on the pawl-bits—that is what we understand by carrying a light at the jib-boom. In my judgment, the collision was imminent at the time I first saw the vessel, but not when I first saw the light. I first saw the vessel after I got on the platform. We were then about 300 feet from the schooner—might have been a little over. The vessel could not then have done anything to avoid us. We left port the day previous to the collision, about 11 a. m., for Monroe. We put in at Dunkirk. We arrived at Dunkirk about two hours from Buffalo, say

about 1 p. m. I think we left Dunkirk about 4; on reflection I should think about 4, though I can't say positively. I was born in Westchester county, N. Y., and was 34 last December. I first commenced sailing when I was 18 years old, I think. I then went on board a sail vessel as a hand before the mast, on the Hudson river. I was there on the river three seasons. I then quit the business. I resumed the business in 1836, on Lake Ontario. I then went on board the propeller Genesee Chief. I think she came out in the fall of 1837. I was on her two months that fall as deck hand, and next spring I shipped as wheelsman on the steamer Wisconsin, out of Buffalo. I remained on her that season as wheelsman. The next spring I went on board the brig H. B. Seymour as 2d mate. I remained on her about two months, until she laid up because business was dull. I then went on board the steamer America as wheelsman, and was on her one month. I then went as wheelsman on board the steamer New Orleans. Stayed there until the 1st November, and then the same fall went to the Empire State as wheelsman, and went one trip that fall to Chicago, and returned when she laid up. I was on the Empire State next season. I shipped as wheelsman in the spring, and continued as such until some time in the summer, when I took the 2d mate's birth on board of her. I continued as such until she laid up for the season. The next spring I shipped as 2d mate on the same vessel, and made a trip to Chicago, and then 1st mate's birth on her return trip, and continued in that capacity until she laid up for the season. I took the 1st mate's birth again in the spring, and continued on her during the season as 1st mate. The next spring, (this last,) I went on the Northern Indiana as 1st mate. Since the collision I have been, most of the time, captain of the Empire, owned and run by the claimants in this case, and I am still captain of that steamboat. Before I went to the bells I had been in the pilot-house about half an hour, as near as I can recollect, and I went to the bells as soon as I discovered the light, after giving the order to change the helm, as I stated. During that half hour I had been sitting all the time on a stool at one of the forward windows of the pilot-house. The deck on which the pilot-house is, does not extend more than about a foot forward of the pilot-house. This room is an octagon form. It is about on the centre line of the boat, and about 70 or 80 feet back from the cutwater. I can't say the precise distance. The wheel was back of me and to my left to the larboard. The binnacle was on my left, and was fastened to the front of the pilot-house. The binnacle light was about as high as my breast as I sat on the stool. The lower part of the binnacle on which the light rested, was about as high as my hips. The light was about 8 inches above the bottom of the binnacle. The light was a bright light. The light is in a square box with a painted glass on each side, right and left. There is a compass on each side of the light, and there is a board in front and rear of it, and the box is so arranged as to throw the light on to the compasses as much as possible and as little into the pilot-house. The pilot-

house was 7 or 8 feet across in each direction. The wheelsman stands as close as he can conveniently to this light, and above it, and looking down upon it. The wheel stands prety well up to the binnacle. The wheel occupied with the wheelsman about 5 feet, leaving just room enough for a man to pass. There are two wheels, and one directly in front of the other, and room enough for two men at each. There are two feet or a little more space between the wheels. I sat forward of both wheels and between the wheels and the side of the pilot-house in front. I sat on the starboard side of the pilot-house. There are two windows in front of the pilot-house, and I sat at the starboard window of those two front windows. There is a space of about six inches between these two front windows. The windows have gothic-shaped sash. The glass panes are, I think, 5 in each window—two on the base, two above, and one in the centre above all. The base of the window is some six inches above the base of the binnacle. The lower glass of four panes in these windows are clear glass. The upper pane is dark-stained glass, which you can't see through well. A sharp point of one of the angles of the octagon is between the front windows and directly in front. The windows were open, the sash having been dropped down. The top of the sash was about 8 or 9 inches above the bottom of the window. There is but one door (a double one) which opens outward each way. The door was in the larboard side of the pilot-house. Wilkins' business was to look out and see to trimming ship—assist on look-out, and to see that everything was in order between decks, and to keep watch about fires and pumps and everything outside the cabin between decks. When everything was right below, he was generally up forward. During the half hour before the collision that I was sitting in the pilot-house, Wilkins was in the house once. He stayed but a short time, and he left, I think, but a short time before the collision. I can't say where he went then. Did not see him or hear from him after he went out until after the collision. Wilkins is, I think, 35 years old. He is here in court. There was no other person on duty as a lookout. There were deck hands on the lower deck. This man Wilkins was what we ordinarily term a watchman, and I mean by that a man who has something else to do besides look out. There was but one person at the wheel. His name was Charles Grant. When I first saw the vessel's light, I did not know which way she was heading. I did not know until I got on to the platform at the bells. I then saw which way she was heading. As soon as I saw the light I gave the order, "port, hard a-port," to the wheelsman. He commenced executing the order, and I went out. If I had known the way the vessel was heading, I think I should have ordered the helm hard a-port, as that would have been the easiest. In making this answer, I assume that the vessel was running about northeast. If the steamer had been a point or half a point to the larboard of the vessel, it would not have been proper to have changed our course by putting our helm hard a-port. In that case I would

have put our helm hard a-starboard. If I had known how the vessel was heading and she was going by the wind, I should, I think, have put my helm hard a-port, as that would have been the easier way to clear her, and assuming, too, that the vessel would have kept her course. I should have done so, if the vessel had been in the position I have described her, but not if the steamer had been a point or a half a point to the larboard of the vessel. Our steamer does not obey the wheel readily. It takes nearly a mile to turn her entirely around. We can't turn her round without stopping, in the Detroit river. When under full headway, it would take four men to get her wheel hard a-port or hard a-starboard, and it takes more when she is in full speed; but with sufficient force the helm can be put hard a-port as well under full headway as when going slowly. Her speed when full is 17 or 18 miles. She is the fastest boat on the lake. The bells are rung by pulling handles on the top of a box on the top of the pilot-house, and the person using them stands on the platform, which reaches on to the roof of the pilot-house, and the box for the handles rises about two feet from this platform. When I got on the platform, I saw the hull of the vessel. (By the Court: I did not see her signal light.) She was then about 300 feet from us—might have been more; might have been 400 feet. I saw her sails also. Going at the speed we were going then, we can reverse the wheels almost instantly. The engine is a powerful one. We can stop the wheels and reverse them while the vessel is going its length. I do not know as it was ever done on any other occasion in that time, but I think it was at the time of the collision, and that it was done once in coming out of Maumee river, when they said they were running 20 miles an hour. We had not then a full load. I think we succeeded in reversing her wheels in less than her length. The speed of the vessel could be checked a sixteenth or an eighth part in going her length. I think about an eighth. It was hazy directly over the water before the collision occurred. Some little time after the collision occurred we blew off steam. Standing on the pilot-house, I could tell whether the wheels were reversed or not by the white foam before the wheels when reversed. I saw the white foam directly after ringing the backing bell, and previous to the striking of the vessel. There was 100 feet, I think, between the bow of the steamer and the schooner when I saw the white foam. We struck the vessel at right angles and at her amidships, as near as I can judge. I can't say whether the hull of the schooner came under the side of the steamer. The bow of the steamer is sharp and lean forward. The wheel-houses and guards extend out about 12 feet from the sides of the boat at the water line, and the guards gradually narrow to the bow of the boat. There is a walk outside of the captain's sleeping room, about two feet wide on the outside of the guards. We think we can determine the course of the wind about as accurately on a steam vessel running 18 miles an hour as they can on a sail vessel. The tail of the smoke does not go

always in the direction of the wind when the steamer is running rapidly, but we have to calculate for that. Perhaps it can't be determined quite as readily with the wind blowing very fresh in the night. We met no other vessel that night before the collision to my recollection, and prior to that time I think I saw no other vessel's lights. I say I think a good bright light might that night have been seen a quarter of a mile, and I think it could not have been seen further than that on account of the haziness of the atmosphere. I don't think the schooner could have been headed northeast by east, judging from the course of our vessel. I know the course we were steering, by not observing any change in the steamboat's course. I think from ten to fifteen minutes before the collision myself and Grant were looking at the compass and talking about her course. Her course was then southwest by west, ¾ west. I can't tell from seeing the compass that her course did not change after that. I went out of the pilot-house as soon as I saw the light. It took me, to get from where I was sitting to the bells, not more than 5 or 6 seconds. In stating the custom yesterday, I did not mean to say that a steam and a sail vessel approaching each other on the same course and about to pass each other, should each pass to the right; but the custom, as I understand, is for the sail vessel to keep her course, and the steamer to pass to the right. If a sail vessel was half a point or a point on our starboard hand, I should still pass to the right, if I was a good distance off. If I was to the leeward half a point and had the vessel close aboard, I should have kept her on my starboard hand.

Direct examination resumed.

I said, on my cross examination, that the boat did not obey the helm easily. The reason she does not is, that she is a very long boat, with a true, easy model. I know of no other reason. It is not owing to any fault in the machinery of the boat. She does not obey her wheel as readily as any boat of her speed and size. I think the Northern Michigan does it a little quicker than she does, and the Empire State a good deal quicker. The consequence of putting a very large force at the wheel when at great speed would be to endanger parting the wheel chain. In ordinary weather we usually have one man only at the wheel. I mean by ordinary weather not rough or stormy. When the Northern Indiana is put on her course, she runs very steady, and is a very easy steering boat when a person understands steering. This is owing to her being a true model.

Charles Grant sworn, says: I live in Buffalo. I am a married man, and a good wheelsman. I have been a wheelsman on the lakes the best part of five seasons. I went on board the Northern Indiana this spring, the 21st of March, as wheelsman. I continued in that capacity until the collision. At the time of the collision I was at the wheel. I had then been at the wheel from 11 o'clock that night to

the time of the collision. I saw the vessel's light before I struck her—a small, poor bright light—a plain globe lamp—white light. I could not tell where it was on the vessel. At that time I could not see the vessel. This was a little over a minute before the collision. Capt. Mead spoke to me about the light, and told me to port my wheel; and then said, "Hard a-port," and passed me, and then he went out. This was as soon as we saw the light. I heaved the wheel hard a-port immediately. Capt. Mead went right up to the platform to the bells. He was in my sight when he went out of the door, but I did not see him after he got on to the platform. I did not hear the bells ring, but I heard the raps of the handles on the top of the pilot-house. This was 4 or 5 seconds after he spoke to me. I do not know whether the wheels were stopped. I could feel by the motion of the boat that she was stopped or checked. I could feel that in a second or two after they rung the bells. I did not have time to look to see whether the water from the wheels was thrown forward. I changed the course of the boat a little before she struck, by putting the wheel hard a-port. I should think ½ or ¾ of a point to the northward or the starboard. The vessel was, I think, not a quarter of a mile off when I first saw the light. At that time I saw no light but the white light. After she came close to our bow, I saw the reflection of the binnacle light; that was when she got within six or seven rods of us—perhaps nearer. I saw no green or red light. When I first saw the vessel, she was off about once and a half the length of our boat—perhaps a little more or less. She then appeared to be heading across our bow. At about 20 to 25 degrees from a right angle, and about directly ahead, but a little to the larboard. I can't tell how long it was before we struck her—probably four or five seconds. After I saw the vessel itself, it might be half a minute, and a minute and a half after I saw the light, before she struck. At the time we discovered the light, and up to the time we put the helm hard a-port, we were steering southwest by west, ¾ west, and had been upon that course from 11 o'clock, when I came to the wheel. We were headed for the middle passage. It was not a clear night. It was thick on the water, and a few stars overhead. It was so high that I could just see a star that ranged with the liberty-cap. The liberty-cap was six or eight or ten feet higher than my head, and from 60 to 80 feet off forward. When I saw the light first, it was about a point or ¾ of a point on the larboard bow of our boat. As we approached the light, I did not look while I was heaving the wheel over. When I first saw the light, Capt. Mead was sitting on a stool right before me, close up to the window. The window was open. The starboard front window was the one he was sitting at, and he was looking out of the window. I was looking through the same window. Mead had been sitting at that window for some time; I should think half an hour, or a little longer. That was a good situation to look out. I looked at the compass once or twice every

minute, to see if I was steering my course. The steamboat did not vary her course much, if any, from 11. She was kept very steady on her course until I put my helm hard a-port. After we saw the vessel, it was too near us for our doing anything to avoid a collision. When I saw the light, I did not take any notice to determine the course it was going. I continued at the wheel until the vessel struck. I stayed at the wheel until 3 o'clock. The collision took place about five minutes past one by the clock on the pilot-house. I saw the man who was the wheelsman on the schooner and was sworn yesterday. I don't know as I had ever seen him before the collision. I saw him on board the steamer when we went into Cleveland after the collision. He was sitting on the engineer's work-bench. I then had a talk with him about the collision. He told me he was at the helm at the time of the collision. I asked him what he hauled her over for and came across our bow. I said, if I was on the vessel, I would have held my helm up, kept my course, and kept on the right side of the steamboat. He said he shoved his helm down and let her come up on a wind. Putting her helm down would be putting it to starboard and throw her head to the larboard.

The witness is asked whether he said he did right or wrong, or anything like that.

Objected to, but admitted and excepted.

He said he believed it would have been better if he had kept his helm up, and that if he had, we would not have hit them.

Recess untill 2½ p. m.

Cross examined: I am a German, and have been here in this country a little over five years. I have been following sailing from the time I was 13 or 14 years old, and have sailed ever since I came into this country; at least during the season of navigation. I have sailed for the last five years, most of the time as wheelsman. I did not go out of the wheel-house from 11 until a little after three o'clock the night of the collision. I did not leave my wheel to see how the schooner was cut. I suppose Mead saw the light first. He spoke as soon as I saw it, and he must have seen it a little first. He spoke to me, and gave me the order to port. It was pretty hard work for one man to put the helm over, and it was all I could do, and I did not look after anything else while doing it. I obeyed the order at once, and put the wheel as Mead told me to do, to port; but I did not get it hard a-port until the speed checked, when I could put it over easier. After I got it entirely over, or within a spoke or two, it went easier, and I had time to look; and then I saw the vessel and its sails. There was a pretty good lake sea on. It was from the wind then and in the earlier part of the day. It was then blowing a six or seven knot breeze. The sea don't make

much difference in the case of putting the helm over. About the same in a sea or calm. Never have more than one man at the wheel, except coming in or going out of port. Then they have two. They have two then, because the wheel wants to be handled quick in going in and out of port. The boat did not stop before the collision, but the wheels did. I swear positively that the wheels did stop. When the wheels are in motion I can feel the jar of the boat, and I believe I can be pretty sure that the wheels were stopped. From the time the wheels were stopped to the striking of the boats, I should think there might be three or four seconds and might be a little more. I did not feel the wheels in motion again after they stopped before the collision. I said, on my direct examination, that I could not tell for certain, but thought the wheels were stopped. I was standing on the floor of the pilot-house while steering. The liberty-cap is on a pole, which stands straight up and down. The bottom of the pole is about 3 feet or 4 feet back of the forward part of the stern. The pole stands on irons on the deck, and this pole extends about 9 or 10 feet above the deck on which the pilot-house is. I could see the ball which was hung on the pole, so that we could use it, in ranging, in steering by the land. The ball slips up and down, and we can set it high or low on the pole. I could see the range of stars with the top of the pole, and this top was about 8 feet above the ball at that time. I could see the pole from the light of the stars overhead, and not from any light on the boat. In the conversation with the man who said he was at the helm of the schooner, I first asked him whether he was on the vessel, and he said he was. I asked him how it came that he could not keep out of the way, and I told him if I was on the vessel, I would try to take the right side. I told him I turned your wheel hard a-port to keep away from him and to take our own side. He said when he came near us he shoved his helm hard down and let her come on the wind; and then I said it was the rule to take the right hand side, and he said he thought it would have been better if he had not put his helm down, but kept it up, and he said he thought they would not have hit us if he had. That is all that was said. He did not tell me he did not put his helm down until the steamer was nearly on to them, but he put his helm down and luffed up when the steamboat came near them. I did not hear him say that just as the steamer came on to him, he put his helm down to save the blow.

William N. Wilkins: I live in Tibersville, Pa., in Crawford county. My business is watchman or look-out on the steamer Northern Indiana. I shipped on her the 18th of May, and was on her up to the time of the collision. I have been on the water since 1838 in various capacities—as hand before the mast, wheelsman, mate, and 2d mate. I have been on the water every season—principally on this lake. I understand steering at the wheel, and the compass a little—enough to know which way we are going. At the time the collision took place,

I was standing on the forecastle or lower deck, on the larboard side, about 38 feet from the cutwater, aft. No obstruction between me and the cutwater. I had been there about two minutes before the collision. I went forward, according to the captain's order, to see if our head lights were good and bright. Our lights were all burning well at that time. I stood with my left arm and breast leaning on the rail, and I was looking out on the larboard bow, nearly in straight direction ahead, but along the larboard bow. I was looking out for vessels or any obstruction whatever. I saw the schooner the first thing I did see. I saw no light at all; not to exceed a minute after I saw her, before she struck. I think I had been standing there and looking out about a minute before I saw her. The moment I saw the schooner, I heard the bell ring—about simultaneously. The bell rung first three times to check her, and one stroke to stop, and one to back her. I heard them all given distinctly. The engine was stopped immediately. A person accustomed to the boat can tell instantly when the engine stops by the motion of the boat. The engine was then backed immediately, as soon as it could possibly be. It was probably half a minute after the engine stopped before the collision. When I first saw the vessel, she was coming directly across our bows, and I supposed she was upon a wind and bound up the lake. It did not look to me as though she was bound down the lake at all. I had been looking forward on the larboard side about a minute. I was looking forward on the larboard bows. The night was quite dark. I think a vessel without lights could not be seen more than a half a quarter of a mile. It was hazy on the water besides being dark. When I saw the schooner, I think she was not farther off than her (the schooner's) length. About five minutes previously I had been in the pilot-house. I probably stayed in the pilot-house ten minutes. I was there looking out of the starboard window, and Mr. Mead was there looking out at the larboard window. I was looking out forward, and I saw no lights then. My business on the boat is to look out for the welfare of the boat in general—to look out for the fires, pumps, baggage, lights, trimming the boat, and to look out ahead, what time I have,—to relieve the man at the wheel or the mate, if he wants to leave the deck. I know they were steering southwest by west, ¾ west, at the time I was in the pilot-house. I don't know as her course was changed after that until the time of the collision. The wind, at the time of the collision, was blowing fresh from the northwest. It had been blowing hard all day. It was then about a six or seven knot breeze. If the general course of the schooner was steering northeast by east, I can't account for her course, unless she threw her helm a-starboard and let her come into the wind or luffing up.

Cross examined: The first thing I saw was the sails of the vessel. The wind was northwest, as near as I am capable of judging. It had been blowing hard from the northwest all day. Just as I saw the ves-

sel I heard the engine's bell ring. It struck three times first. It then struck once. It then struck once again. It did not take long to make these three signals. It was not half a minute that was occupied in striking all these bells; in the neighborhood of half a minute. As soon as the first three bells or taps were rung, the wheels stopped, and the other taps were after the wheels stopped. There was not more than three seconds between the stopping and checking bells. The wheels were stopped before the stopping bell rung—O, no! before the backing bell. The wheels stopped at the time the stopping bell rung. There were about two or three seconds between the ringing of the backing bell and the collision. It was between a half a minute and a minute. I was standing on the larboard side of the steamer. I saw the sails of the schooner before the hull, and then the hull. I am positive it was quite dark. The night was dark. There was no moon and but few stars, and there was a haze on the water, which prevented seeing a vessel very far. When I first saw the vessel, she was coming right along broadside towards me. I kept looking at her until the collision. (The steamer was making 15 or 16 miles an hour when I first discovered the vessel. Her speed was lessened nearly one-third after the wheels were reversed and before the collision.—This in a parenthesis is taken on an inquiry by the Court.) When I was in the pilot-house, Mead was looking out of the window of the pilot-house and was sitting on a stool.

Thomas Fitzpatrick sworn, says: I live in Buffalo, and am 30 years old. I am an engineer. I was on the Northern Indiana as a first engineer at the time of the collision. I had been on her from the time she came out. At the time of the ringing of the checking bell, at the time of the collision, I was in the starboard middle gangway, abreast of the engine-room. I heard the bells ring. They were rung first three taps, and I started for the engine-room and found the 3d engineer there. He had checked the engine when I got there. I stepped past him to stop her, and as I stepped past him the stopping bell rung. While I was stopping the engine, the backing bell rang. I stopped her, and while I was stopping her the backing bell rang, and I put in the starting bar and backed her as soon as I could. That was only an instant after I put the starting bar in. The engine made from one and a half to two turns of the wheel before the vessel struck. The 3d engineer was John McGowen, the 2d Joel Benedict. They were both on board. The 2d engineer was asleep at the time. He was not on watch. These bells were answered as soon as they could be. I was in the gangway for no particular reason. The gangway where I was, was about 25 feet from the point where I had to go to check or stop the engine. I had not at the time been in the engine-room for some few minutes. I think the starboard door of the engine-room was shut. When the wind blows, we keep our doors shut, or one of them.

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Cross examined: I was not doing anything in the gangway. No one was with me. I was not lying down. I had been there a few minutes—perhaps not five. The 3d engineer was in the room when I went out, which was 10 or 15 minutes before I had been on deck. I had not taken anything to drink in the mean time. When I opened the door and went in, the 3d engineer had his hand on the throttle bar to shut off the steam. To check the engine, we shove down the handle, which is attached to the throttle valve and comes up into the engine. I did not say anything to the 3d engineer when I went into the engine-room. The 3d engineer was standing near the centre of the engine, but a little on the starboard side. The throttle valve was on the starboard side. I was passing the 3d engineer as the stopping bell rang. To stop the engine and to check it, we must be about at the same place. The handle from the throttle valve and the starting bar are not more than 15 inches apart. The engine can be stopped dead in five seconds. I think it was done in five seconds in this case. From the time the engine was stopped to the collision, I should think was near a minute. The backing bell rang just as I had stopped her, or while I was stopping the engine. I think the engine can be stopped, reversed, and started back in about five seconds, or a little more. To make the revolution and a half, or two revolutions, would take near a minute; a little less, I think. When going under full headway, the engine makes 18 or 18½ revolutions a minute.

By the Court; She was making about 18 or 18½ revolutions at the time the checking bell was rung, and she was making about 17 miles an hour, and might be a little more. If going at the rate of 17 miles an hour, and the signals were given and answered as quickly as possible for checking, stopping, and backing, her headway would be so far stopped as not to injure a vessel by collision in going from twice and a half to three times her length. Beyond that, I think, there would be no danger to a vessel. If running 12 miles an hour, I suppose she could be checked in two-thirds that distance.

John McGowan sworn, says: I reside in Erie county, Pa. I am 26 years of age. I have followed the lake for the last ten years in steamboating. I was on the Northern Indiana at the time of the collision. I heard the checking bell ring. I was then in the engine room door on the larboard side. I checked the engine. I stepped right into the engine-room and shut down the throttle. The stopping bell then rung before I had got my hand off from the throttle. The head engineer was there, and he stopped her; that was Mr. Fitzpatrick. He then put the bar in and backed her. No bell rang after the stopping bell until some time after. All the bells I heard were three and one. The backing bell rung after he had been backing her, a minute or two. The engineer stopped her and backed her before the backing bell rung. It was about two or three steps from where I stood when the bell rung to the handle of the throttle valve.

Cross examined: I had been out of the engine-room, and I stood out by the door. I was standing by the door doing nothing. I don't recollect whether I was on the forward or after part of the door. I was not standing in the doorway. The door was open. My face was towards the engine-room. I had been there 15 or 20 minutes probably. I had been down in the hold trying the water before I went to the door, and I went round to the starboard side and around the chimneys to the door. I don't think I was in the hold more than a minute or two. The head engineer was in the engine-room when I went away. The head engineer was there when I came back. He was in the engine-room—I am sure of that. I think he went out when I came back to the door. I don't think the backing bell rung until after the backing commenced—some minutes or two after he commenced backing; nor was it rung till after we struck the vessel. I am sure the engine was reversed before the vessels struck. I think the engine, after it was reversed, made one and a half or two turns before we struck. It probably took it half a minute to make those turns.

Capt. Robert Wagstaff sworn, says: I am a sailor. (The claimants object to the captain's competency as a witness. The objection being based on the ground that he was the captain of the boat at the time of the collision, and therefore liable *in personam.* Objection overruled, and question reserved.) I have been a sailor from 1824. I have been captain of a steamboat for a whole season only—this year and once before. I have been master of sailing vessels since 1832—of brigs, barques, and schooners; and ever since, except a little while, I was mate of the steamer Empire. I was captain of the Northern Indiana this season up to the time of the collision. At the time the bells first rang I was asleep in the mate's room. I had given up my room to some gentlemen. The mate's room was on the hurricane deck, nearly midships of the boat. I heard none of the bells. The mate woke me after the collision. I did not even hear the collision. I turned in about a quarter before 12 that night. The wind was blowing a moderate breeze from about northwest or west-northwest, or something in that direction; but I did not particularly notice the wind. The atmosphere was hazy when I turned in. Not a very clear night. I got up when the mate woke me. I went out in my stocking feet and jumped up on the platform where the bells were as soon as I could get to it. The mate called me, and I got up as soon as I could, as I did not know what had happened. At first I saw nothing. I then went back and put on my coat and boots, and went back, and the mate told me he had run into a vessel. I then looked and saw the vessel lying across our bows. When I first saw the vessel we had backed out and she was clear of us. Her sails were shaking. Her head being to the wind, her stern was to the southward. I had some conversation with Capt. Kirby. I asked him to come up to the stand. I saw him

standing in his shirt-sleeves, and I asked him if he had any coat, and he said "No." I told him if he would hold on I would get him one, and I went and got him one and gave it to him. I asked him where he thought he was, and he said he thought he was off Grand River. I told him that could not be so, for Grand River light was broad on my front bow when I turned in; nearly abreast of Grand River lights when I turned in. That was pretty much all that was said. I did not tell him that I was above Cleveland, and pretty near the islands. I might have told him we were off Cleveland, but I said nothing about the islands. I did not tell him I was steering for the north passage. I am sure of that, for I had no idea of going the north passage; for it had never entered my mind. I might have told him that I was going the middle passage, but I don't recollect that I told him even that. I am under the impression I may have told him my course was west by south, ½ south, but I have no recollection of it now. When I got up and came out, it was hazy, and I could but just see the schooner, although I presume she was not more than twice her length from us.

Cross examined: West-southwest by my compass takes me direct to the northern passage, from Dunkirk. Compasses vary. When I left Dunkirk, I had not determined to go the middle passage, but we were steering along up the land. When we started from Dunkirk we were going to stop at Cleveland. This boat was not, at the time of the collision, accustomed to steer from Dunkirk to the middle passage. It has never been run direct from Dunkirk to the middle passage when I have been on her. Before we got to Cleveland and before I turned in, a committee of our directors determined not to go to Cleveland. From the place of the collision we steered south or south-southwest or southwest—I am not positive which. We started in for the nearest land. We were then five or six miles above Cleveland. We changed our courses two or three times on going into Cleveland. Did not see the land until we were within a mile of it. That was, I think, 3 or 4 o'clock. The day broke just as we got into Cleveland. We were leaking badly.

By the Court: We changed our course for the middle passage about 10 o'clock, and we were then a little above Ashtabula, and 5 or 6 miles out in the lake. We then took our course for the middle passage, southwest by west, ¾ or ½ west, and I do not know that the course was changed up to the time of the collision.

Elijah K. Bruce: I reside in Buffalo, and am a ship chandler and vessel owner. I own part of nine vessels. I have dealt a good deal in vessels. I know the Plymouth. Have seen her frequently. I, in June last, before the collision, asked her value. My way of figuring is to take the cost and allow ten per cent. per year depreciation and what it will cost to give her new sets of sails and running rigging at

the end of every four or five years. I think she was worth, last June, from $5,000 to $5,500. The price of freights from Milan here was 3 to 3½ cents per bushel for grain. I am not positive about that. On flour probably 15 cents per barrel. On potashes 50 cents per cask, or about $1.50 to $2 per ton.

Cross examined: I brought no freights from Huron or Milan in June last, or any time this year. I do not know positively what the freight was. I judge from the freights to Toledo, which were generally the same thing. Freights vary very much, and differently in different places. I do not know positively that any grain was shipped from Milan this year, before the first of July, for less than four cents. Potash is ordinarily charged for by the ton, though it is sometimes brought by the cask. I can't tell the price per ton from Milan to Buffalo last June. I think a vessel ten years old is nearly worn out. If $1,200 was expended in new sails and rigging for the vessel last spring, that should be added to my estimate. I did not examine this vessel particularly. The Plymouth was in the habit of going into the ship canal. I have seen it at different places.

Vincent Bidwell sworn, says: I reside in Buffalo. I am a ship carpenter, and have followed the business of ship-building for fifteen years. The price of building schooners of about 200 tons burthen is $26 per ton, exclusive of rigging, sails, anchors, chains, and furniture. It includes the hull and spars. The rigging, sails, anchors, chains, and other fittings and furniture, for such a vessel, costs, if well fitted out, about $2,800. This includes everything except what is included in the price of $26 per ton.

I know the Plymouth. I saw her this summer after her repairs and refitting. In June last I should think she was worth, before the collision, about $5,800.

Cross examined: This vessel had a topsail. I have been on board of the vessel and looked at her, but made no particular examination. Never examined her particularly. I know nothing particular about her sailing qualities, except she was a very good vessel and a well-built vessel. She was in good condition. I think she had a topsail this season, but I am not quite positive. She had one last season.

Claimants rest.

Libellants again.

William L. Carpenter again, recalled: I heard the testimony of the two engineers. I heard that of the one last sworn. When I was standing at the door of the engine-room, I was standing in the door on the starboard side of the boat. This door was not shut when the bells rung. There was no one standing in the opposite door when I

went there. I am not sure whether the opposite door was open or not when I went there. There was no one standing by the door where I was, or in the room when I first went there. The first man that went into the engine-room went into the door where I stood. A very short time after, a man came into the opposite door; it might have been half a minute or a minute after.

Richard Eggleston sworn, says: I was on board the Plymouth at the time of the collision. I got on to the steamer and went to Cleveland. I heard a conversation on that steamer botween Clark Stevens, our wheelsman, and the person who represented himself as the wheelsman of the steamer. We were sitting on a box forward of the engine. I don't recollect the conversation distinctly.

Cross examined.

Testimony closed.

DISTRICT COURT OF THE UNITED STATES,
Northern District of New York.

I, Aurelian Conkling, clerk of the said court, do hereby certify, that the foregoing is a true copy of the notes of testimony taken by the judge of the said court upon the final hearing of the cause hereinbefore entitled.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, the twenty-second day of April, A. D. 1853.

[L. S.]

AURELIAN CONKLING, *Clerk.*

Filed May 6, 1853.

In Admiralty.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

JEDUTHAN J. COBB & HENRY P. TYLER, libellants and respondents,
vs.
THE STEAMBOAT NORTHERN INDIANA. The Michigan Southern Railroad Company, respondents and appellants.

In Admiralty.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

JOSEPH F. NIXON & HORACE MACK,
libellants and respondents,
vs.
THE STEAMBOAT NORTHERN INDIANA.
The Michigan Southern Railroad Co., respondents and appellants.

In Admiralty.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

JOHN STEVENS & CHARLES RYAN,
libellants and respondents,
vs.
THE STEAMBOAT NORTHERN INDIANA.
The Michigan Southern Railroad Company, respondents and appellants.

In Admiralty.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

JASON PARKER & JOHN STEVENS,
libellants and respondents,
vs.
THE STEAMBOAT NORTHERN INDIANA.
The Michigan Southern Railroad Company, respondents and appellants.

It is hereby stipulated and agreed that the annexed plan or diagram, marked "A," is a correct representation of the side view or elevation of the steamboat Northern Indiana forward, and including the wheel-house.

That the plan or diagram hereto annexed, and marked "B," is a correct representation of the main deck of said boat forward of the wheel, and of the location of the engine-room.

That the plan or diagram hereto annexed, and marked "C," is a correct representation of the hurricane deck of the said steamboat forward of the wheel-house, showing the shape and size of the pilot-house, and of the door leading into it.

That the plan or diagram hereto annexed, marked D, is a correct representation of the promenade deck of said boat forward of said boat.

That each of the said plans or diagrams is drawn on a correct and uniform scale of sixteen feet to the inch.

That this stipulation may be read in evidence on the trial of each of the above entitled causes, with the same force and effect as though the matters herein contained had been proved by a competent witness in each of said causes.

JOHN GANSON,
Proctor for appellees.

[For diagrams, marked A, B, C, and D, see originals, pages 73–4–5–6.]

At a chamber term of the circuit court of the United States of America, for the northern district of New York, in the second circuit, held at Cooperstown, in said district, on Thursday, the 8th day of September, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Samuel Nelson, circuit judge.

HORACE MACK AND JOSEPH F. HIXSON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Company, claimants and appellants.

Whereas, at a stated session of the district court of the United States of America, for the northern district of New York, held at the city of Buffalo, on the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, before the honorable Nathan K. Hall, district judge of said district, a certain cause of admiralty of libel, wherein Horace Mack and Joseph F. Hixon are libellants, and the Steamboat Northern Indiana, her tackle, apparel, and furniture, the Michigan Southern Railroad Company, are claimants and respondents, came to be tried, and then and there, before the aforesaid district judge, was tried. And whereas, the said district judge, after hearing the proofs and allegations of the said libellants, and maturely considering he same, did, on the day and year, and at the place aforesaid, pronounce, order, adjudge, and decree, that the collision in the libel therein set forth accrued as therein stated; and that the libellants were the owners of four thousand bushels of wheat on board the schooner Plymouth, which was sunk by the said collision; and that the said wheat was thereby wholly lost to the libellants; and that the collision occurred by reason of the negligence and mis-

management of those having charge of the said Steamboat Northern Indiana.

And it is further ordered, adjudged, and decreed, that the libellants, by reason of the premises, ought to have and receive the sum of three thousand four hundred and forty-eight dollars and twenty cents, for and on account of the damages by them sustained by reason of the said collision.

And it is further ordered, adjudged, and decreed, that the said claimant and respondent, within fifteen days after service upon its agent or proctor of a copy of this decree, pay into the registry of the court the said sum of three thousand four hundred and forty-eight dollars and twenty cents, together with the costs and charges by the libellants incurred in the prosecution of this suit, as the same shall be taxed, and also the fees and charges of the officers of the court in this suit to be taxed.

And it is further ordered, adjudged, and decreed, that unless the said claimant and respondent shall make the payments above directed as hereinbefore provided, execution do forthwith issue against it and its sureties, upon the stipulation whereupon the said steamboat was delivered out of the custody of the marshal upon the warrant of arrest heretofore issued in this suit. And it is further ordered, adjudged, and decreed, that if the said claimant and respondent shall make the said payments as hereinbefore directed, it be forever exonerated from all other and further payments in the premises.

And whereas the said cause has been removed to this court by an appeal taken herein on the part and behalf of the said claimant and respondent, and this court having heard the proofs and allegations of the respective parties herein, and the argument of counsel, and maturely considered the same, do order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed by the said court, that the aforesaid decree of the said district court above set forth, be, and the same is hereby, affirmed in all respects.

And it is further ordered, adjudged, and decreed, that said claimant pay to said libellants said sum of three thousand four hundred and forty-eight dollars and twenty cents, with interest thereon at seven per centum per annum, from the tenth day of November, eighteen hundred and fifty-two, together with all costs, fees, and charges to be taxed, as in said decree is set forth.

And it is further ordered, adjudged, and decreed, that the aforesaid decree do stand as the decree of this court, and that, in addition thereto, and the amount therein directed to be paid to the said libellants, it is further ordered, adjudged, and decreed, that the said respondents pay into the registry of this court the costs and charges of the said libellants on the appeal in this cause to be taxed, and also the lawful fees and charges of the officers of the court on said appeal in this behalf to be taxed; which said sums, when ascertained and taxed, are to be added to the sums set forth in the aforesaid decree, and to be collected in the manner specified in said decree.

In Admiralty.

UNITED STATES CIRCUIT COURT,
For the Northern District of New York.

HORACE MACK et alius, appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, &c., appellant.

Retainer on appeal	$7 50
Compensation for services on appeal	5 00
Docket fee for advocate	20 00
Paid check of district court for copy of evidence	7 77
Paid check of district court for fees	15 10
Check of circuit court for copy of apostles, &c	6 30
Do. of circuit court for certificate	60
Do. of circuit court for copy of evidence	26 00
Do. of circuit court for certificate	25
Marshal's bill	12 88
Clerk's fee on docket	3 00
Clerk's fee for copy of decree	1 00
Interest of decree, $3,569 72	208 24
Agreed to at	$313 59

DENNIS BOWEN,
Proctor for appellant.

Add on Clerk's fees.

Making and entering decree, 10 f	$3 00	
Making docket and taxing costs	1 00	
Making record and judgment	1 00	
		5 00
Costs taxed this 22d Sept., 1853, at		$318 59

Filed Sept. 22d, 1853.

A. A. BOYCE, *Clerk.*

IN UNITED STATES CIRCUIT COURT,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, and furniture. The Michigan Southern Railroad Company, claimants and appellants.

The said libellants, as appears from the transcript sent to this court

from district court, and which is annexed, recovered a decree therein against claimants, on 10th November, 1852, for $3,448 20, from which claimants appealed to this court by petition, filed May 2d, 1853; to which appellees filed their answer, May 13th, 1853; the transcript was sent and filed here, May 6th, 1853; all which appears by papers hereto annexed. The appeal was duly brought on and argued at June term, 1853; and on 8th September, 1853, a rule was entered herein, affirming the decree of said district court, with costs.

The costs herein are taxed at $318 59; which amount, added to the decree of $3,448 20, makes a total amount $3,766 79, as the decree of this court hereby.

Wherefore the said papers, as required, are hereto annexed, and a final judgment and decree docketed in favor of the said appellees, against the said appellants, for three thousand seven hundred and sixty-six dollars and seventy-nine cents, and judgment signed this 22d September, 1853.

A. A. BOYCE, *Clerk.*

Filed Sept. 22d, 1853.

Petition of appeal.

CIRCUIT COURT OF THE UNITED STATES,
Northern District of New York.

HORACE MACK AND JOSEPH F. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, &c. The Michigan Southern Railroad Company, claimant, respondent and appellant.

To the Supreme Court of the United States:

The petition of appeal of the above named, the Michigan Southern Railroad Company, respectfully shows, that a decree was lately made in the circuit court of the United States, for the northern district of New York, bearing date the ninth day of September, one thousand eight hundred and fifty-three, in a certain cause of admiralty and maritime jurisdiction pending in the said court, wherein the above named Horace Mack and Joseph F. Hixon were libellants, and the above named, the Michigan Southern Railroad Company, was defendant; in and by which said decree, it was ordered, adjudged, and decreed, that the said decree in the court below be affirmed, with costs to be taxed; which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant respectfully prays, that the said decree may be reversed; and that such other decree may be made by this

court as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which it has lost by said decree.

And this appellant, as in duty bound, will ever pray.

DENNIS BOWEN,
Proctor for appellant.
H. W. ROGERS, *Advocate.*

Answer to petition of appeal.

SUPREME COURT OF THE UNITED STATES.

HORACE MACK AND JAMES F. HIXON, libellants and appellees,
vs.
THE STEAMBOAT NORTHERN INDIANA, her tackle, apparel, &c. The Michigan Southern Railroad Company, respondents and appellants.

The answer of the above appellees to the petition of appeal of the appellant.

These appellees, not confessing or acknowledging all or any of the matters or things to be true, as in and by said petition of appeal are contained and set forth, for answer thereunto say, that they believe it to be true that such decree as is complained of by the appellant was made by the circuit court of the United States for the northern district of New York, as in the said petition of appeal is set forth; but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree is agreeable to justice and equity, and they therefore pray that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these appellees.

JOHN GANSON,
Proctor for the appellees.